

No. 794

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

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THE NEVADA NATIONAL BANK  
OF SAN FRANCISCO, A NATIONAL  
BANKING ASSOCIATION,

*Appellant,*

*vs.*

WASHINGTON DODGE, AS ASSESSOR  
OF THE CITY AND COUNTY OF SAN  
FRANCISCO, STATE OF CALIFORNIA, AND  
JOSEPH H. SCOTT, AS TAX COL-  
LECTOR OF SAID CITY AND COUNTY,

*Appellees.*

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TRANSCRIPT OF RECORD

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Upon Appeal from the United States Circuit Court for the  
Northern District of California.

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THE FILMER BROTHERS CO. PRINT, 424 SANSOME STREET, S. F.

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*In the Circuit Court of the United States, Ninth Circuit,  
Northern District of California.*

THE NEVADA NATIONAL BANK OF  
SAN FRANCISCO, a National Bank-  
ing Association,

Complainant,

vs.

WASHINGTON DODGE, as Assessor of  
the City and County of San Francisco,  
State of California.

Defendant.

**Bill in Equity.**

To the Judges of the Circuit Court of the United States  
for the Northern District of California, in the Ninth  
Circuit, Sitting in Equity:

The Nevada National Bank of San Francisco, a national banking association organized and existing under and by virtue of the laws of the United States, brings and files this its bill of complaint against Washington Dodge, as Assessor of the City and County of San Francisco, State of California, and thereupon humbly complaining your Orator, the Nevada National Bank of San Francisco afore-said, shows to your Honors as follows:

1.

That on January 1st, A. D. 1898, your orator was, and at all times thence hitherto has been, and still is, a

national banking association, organized and existing under and by virtue of the laws of the United States, for carrying on the business of banking, as provided for and authorized by the provisions of the statutes of the United States in this behalf, with a capital stock of three millions of dollars, divided into thirty thousand shares of stock of the par value of one hundred dollars to each share; that the place where its banking house and its operations of discount and deposit were and are carried on and its general business conducted, as authorized and provided for in its articles of association, is the City and County of San Francisco, State of California, where it has been and is doing business in this State, and where it has its principal place of business in this State.

2.

That Washington Dodge, the defendant above named, was, on January 1st, A. D. 1899, thence hitherto has been, and still is, the duly elected, qualified and acting Assessor of the City and County of San Francisco, State of California, and was and is a citizen of the State of California and a resident and inhabitant of said Northern District of California, and was and is the person and officer under and by virtue of the laws of the State of California authorized, as hereinafter more particularly set out, to assess taxes for and in the City and County of San Francisco.

3.

That by an act of the legislature of the State of California, approved March 7th, 1881, entitled "An Act to

amend the Political Code of the State of California relating to revenue, by adding a new section to be known as section 3608 of said code, and by amending sections 3607, 3617, 3627, 3629, 3650 and 3651 and 3652 of said code, and by repealing section 3640 of said code, all relative to revenue"—there was, among other things, on said 7th day of March, 1881, added to the Political Code of said State of California a new section numbered 3608, in the words and figures following, to wit:

“Shares of stock in corporations possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent, and the assessment and taxation of such shares, and also of the corporate property, would be double taxation. Therefore, all property belonging to corporations shall be assessed and taxed, but no assessment shall be made on shares of stock, nor shall any holder thereof be taxed therefor.”

That by an act of the legislature enacted on the 14th day of March, 1899, entitled “An act to amend section 3608 of the Political Code of the State of California relating to the general revenue<sup>1</sup> of the State and to property liable to taxation for the purpose of revenue, and to add new sections to be known as sections 3609 and 3610, and also relating to the general revenue of the State and to property liable to taxation for the purpose of revenue,”—said section 3608 was, on said 14th day of March, 1899, amended so as to read as follows:

“3608. Shares of stock in corporations possess no in-

trinsic value over and above the actual value of the property of the corporation which they stand for and represent, and the assessment and taxation of such shares and also all the corporate property would be double taxation. Therefore, all property belonging to corporations, save and except the property of national banking associations, not assessable by federal statute, shall be assessed and taxed, but no assessment shall be made of shares of stock in any corporation, save and except in national banking associations, whose property, other than real estate, is exempt from assessment by federal statute.

That by said act of March 14th, 1899, there were on said 14th day of March, A. D. 1899, added to the said Political Code of the State of California, two new sections numbered respectively 3609 and 3610, and being respective in the words and figures following, to wit:

“3609. The stockholders in every national banking association doing business in this state, and having its principal place of business located in this state, shall be assessed and taxed on the value of their shares of stock therein; and said shares shall be valued and assessed as is other property for taxation, and shall be included in the valuation of the personal property of such stockholders in the assessment of the taxes at the place, city, town, and county where such national banking association is located, and not elsewhere, whether the said stockholders reside in said place, city, town, or county, or not; but in the assessment of such shares, each stockholder shall be allowed all the deductions permitted by law to the holders of



moneyed capital in the form of solvent credits, in the same manner as such deductions are allowed by the provision of paragraph six of section thirty-six hundred and twenty-nine of the Political Code of the State of California. In making such assessment to each stockholder there shall be deducted from the value of his shares of stock such sum as is in the same proportion to such value as the total value of its real estate and property exempt by law from taxation bears to the whole value of all the shares of capital stock in said national bank. And nothing herein shall be construed to exempt the real estate of such national bank from taxation. And the assessment and taxation of such shares of stock in said national banking associations shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this state.”

“3610. The assessor charged by law with the assessment of said shares shall, within ten days after he has made such assessment, give written notice to each national banking association of such assessment of the shares of its respective shareholders; and no personal or other notice to such shareholders of such assessment shall be necessary for the purpose of this act. And in case the tax on any such stock is unsecured by real estate owned by the holder of such stock, then the bank in which said stock is held shall become liable therefor; and the assessor shall collect the same from said bank, which may then charge the amount of the tax so collected to the account of the stockholder owning such stock, and shall have a lien, prior to all other

liens, on his said stock, and the dividends and earnings thereof, for the reimbursement to it of such taxes so paid.”

## 4.

That under and by virtue of the constitution of the State of California all property not exempt from taxation under the laws of the United States and under the laws of the State of California, in the possession or under the control of any person, at 12 o'clock noon on the first Monday in March in each year, is subject to assessment and taxation as by the laws of said State of California provided for the fiscal year ending upon the 30th day of June of the next succeeding year, as hereinafter more particularly set out.

## 5.

That pursuant to the requirements of the Revised Statutes of the United States in that behalf, the President and Cashier of your orator have at all times caused to be kept, and do now keep, in the office where the business of your orator is transacted, to wit, in said office in the City and County of San Francisco, a full and correct list of the names and residences of all of the shareholders of your orator, said list containing the number of shares held by each of said shareholders; that said list, during all of the times hereinafter mentioned has been, and is, during the business hours of each day in which business could have been or was legally transacted, subject to the inspection of said defendant; that on or about the 7th day of March, A. D. 1900, your orator, at the request of said defendant,

gave and delivered to him a full and correct list of the names and residences of the shareholders of your orator, as the same appear on the full and correct list of shareholders kept as aforesaid, showing the number of shares of its stock held by each of said shareholders, at 12 o'clock noon on the 5th day of March, A. D. 1900, said 5th day of March, A. D. 1900, being the first Monday in March, A. D. 1900; that the number of said shareholders at 12 o'clock noon on said first Monday in March, A. D. 1900, was two hundred and three (203).

## 6.

That under the provisions of the constitution of the State of California the fiscal year in said State of California is from the first day of July of each year to the thirtieth day of June of the next succeeding year; and that, pursuant to the laws of said state, the Board of Supervisors of said City and County of San Francisco did, on September 18th, 1899, fix the rate of tax for said City and County for the fiscal year ending June 30th, 1900, at the rate of \$1.029 on each \$100 valuation of the taxable property upon the assessment books of said City and County for said fiscal year; and that the State Board of Equalization of said State of California, pursuant to the laws of the State of California in that behalf, at the time and in the manner provided therefor by law, did fix the rate of taxation for the fiscal year ending June 30th, 1900, on all property, both real and personal, in the City and County of San Francisco, at the rate of 60 cents and one mill on each \$100 of valuation of said property for said

fiscal year; and thereafter, to wit, on September 18th, A. D. 1899, said Board of Supervisors of said City and County of San Francisco did fix the rate of state taxation for the fiscal year ending June 30th, 1900, on all property of said City and County of San Francisco not exempt by law at the sum of 60 cents and one mill on each \$100 valuation of said taxable property upon the assessment roll for said fiscal year; the combined rate of taxes for said fiscal year for state, city and county purposes amounting to the sum of \$1.63 on each \$100 valuation of taxable property in said City and County of San Francisco.

## 7.

That under and by virtue of the laws of said State of California every tax due upon personal property is a lien upon the real property of the owner of said personal property from and after 12 o'clock noon of the first Monday of March in each year; and that, under and pursuant to the laws of the State of California, the defendant claims the right when any taxes on personal property are not a lien upon real property sufficient to secure the payment thereof, to collect all such taxes between the first Monday in March and the third Monday in July of each year; and under said laws said defendant claims the power to make such collection by seizure and sale of any personal property owned by the person against whom such tax is assessed, said sale to be of an amount of such personal property sufficient to pay the taxes, the percentage thereon provided by law, and the costs of sale; and that, under and by virtue of said laws,

said defendant is governed as to the amount of taxes to be collected on such personal property by the state and city and county rate of taxation for the previous fiscal year.

## 8.

That said defendant, as Assessor as aforesaid, has notified and informed your orator that he, as such Assessor, is about to assess, and your orator verily believes that, unless restrained by this Honorable Court, he will, under and by virtue of the aforesaid act of the legislature of March 14th, 1899, amending the provisions of the Political Code of said State of California as hereinbefore set forth, and not otherwise, assess the shares of the capital stock of your orator at a valuation of \$113 per share for each and every share of the capital stock of your orator, and in case the tax on any of such stock is unsecured by real estate owned by the respective holders of such stock, then and in that event that he will collect, as provided in and by said section 3610 of said Political Code, the amount of such tax from your orator, at the hereinbefore alleged rate of taxation on the valuation of such shares. That the amount of such tax, at the rate of taxation for city, county and state purposes as aforesaid, of \$1.63 upon the \$100 valuation of said stock as hereinbefore last stated, will amount to the sum of \$1.8419 upon each share of said capital stock; that on said first Monday of March, A. D. 1900, the taxes upon 12,293 shares of said capital stock were, thence hitherto have been, and still are unsecured by real estate owned by the holders of such stock; that the taxes upon said 12,293 shares of stock at the aforesaid valu-

ation thereof and at the rate of taxation thereon hereinbefore alleged will be the sum of \$22,642.47. And said defendant, as Assessor as aforesaid, has notified and informed and threatened your orator that said sum of \$22,642.47 will be collectible from your orator, and that, as such Assessor, he will enforce payment and collection thereof from your orator, unless restrained from so doing by this Honorable Court; and your orator verily believes that said defendant, as Assessor as aforesaid, unless restrained therefrom by this Honorable Court, will carry out and execute his aforesaid threats to make said assessment upon the capital stock of your orator as hereinbefore stated, and to enforce collection and payment of the tax thereon of and from your orator as hereinbefore stated.

## 9.

That on January 1st, A. D. 1900, and long prior thereto, and thence hitherto, there was and is an association doing business in said City and County of San Francisco known as and called the Stock and Bond Exchange; that said association is composed of members, stockholders admitted thereto, and none others; that said association, during the several periods of time herein last before stated, had, and has, a place of business in said City and County of San Francisco, whereat are sold stocks, bonds, United States bonds, and securities, at the board sessions thereof; that the manner of making such sales is as follows, that is to say: in open session of said board, whereat, however, only members of said board are admitted, the caller of said board calls off a list of the names of the several bonds, stocks and

securities designed to be offered for sale, and as he so calls off the same such broker as may desire to buy or sell any of the same publicly announces the amount he is willing to bid or offer therefor per share and the number of shares that he is willing to take or sell; whereupon the offering and bidding brokers, having agreed upon a purchase or sale, as the case may be, said caller publicly announces the same, and thereupon the purchasing broker pays for and accepts the delivery of the stocks, bonds or securities so bought, and pays therefor according to the terms of his bid. That only such stocks of corporations are sold at said board as are what are technically called listed thereon or listed upon said board: that is to say, such corporations as desire to list their stocks for sale at said board pay said board the sum of \$100 a year for so listing the same, which listing means that the stocks of the corporation so listed are regularly offered for sale at the official sales of said board, and only such stocks as are listed as aforesaid are offered for sale or sold at the official sales of said board, and only sales or offers for sale of such stocks are officially reported in the official report of the proceedings of said exchange; that where the stock of corporations is listed, the sales or offers for sales thereof at said exchange are regularly reported from day to day in the official publication of the proceedings of said board, whether sales thereof actually take place or not; where sales thereof do not actually take place on the day the same are so reported, the rate of sale or offer for sale last actually had at said Board is

reported until such time as from actual sale or offer for sale of the same the price thereof may be changed. But the stocks of corporations not so listed thereon are never reported, and do not appear in said publication except where unofficial sale of the same may have been actually made after the regular sessions of said board.

That in making sales of stock in manner aforesaid, the value of the assets of the corporation whose stock may be sold or offered for sale constitutes a material inducement to the sale of the same, and in estimating such value, where the corporation holds United States bonds or other property or securities exempt from taxation, the market value of the same is taken into account, and not merely the face or par value of the same. That in making sales of stock in manner aforesaid, the prosperous condition and future prospects of the business of the corporation whose stock may be sold or offered for sale, as well as the known character of the management of the business for skill and ability are taken into account and form material elements in estimating the price of the stocks so sold, and frequently the sale of stocks so sold and the price realized upon such sales are materially affected by combinations of purchasers or sellers at such sales formed for the purpose of depressing or raising the prices to be realized at such sales of said stocks; that while the value of the corporate assets of the corporation whose stock is thus sold or offered for sale constitutes a material inducement to such sales, the prices realized thereat are not exclusively based thereon, but in addition thereto are based upon



purely speculative and conjectural considerations without foundation in fact; that such market value of said bonds, stocks and other property fluctuates from day to day, sometimes amounting to a very large premium: that is to say, the premium upon stock is the amount of the market value thereof over and above the par or face value of the same, and the premium upon bonds is the market value of the same over and above the par or face value of the same.

That the aforesaid sales, made in manner aforesaid in the Stock and Bond Exchange aforesaid, are daily reported in a newspaper or periodical published twice a day under and by authority of the Stock and Bond Exchange aforesaid, and known as and called "The Stock and Bond Exchange"; that from the sales so made and reported in the Stock and Bond Exchange publication as aforesaid is ascertained the current market value of such stocks, bonds and securities as are offered for sale and sold as aforesaid. That on said first Monday of March, A. D. 1900, to wit, on March 5th, noon, A. D. 1900, your orator held and owned \$2,070,000 of bonds of the United States, under the laws of the United States, and of the State of California, exempt from assessment and taxation by the State of California; that on the day and year last aforesaid the premium on said \$2,070,000 bonds was the sum of \$265,284.05, making said \$2,070,000 of United States bonds with the premium thereto, equal to the sum of \$2,335,284.05; that on said first Monday of March, A. D. 1900, to wit, on March 5th, noon, A. D. 1900,

your orator held and owned the sum of \$2,276,917 in cash, exempt under the laws of the United States and of the State of California from assessment and taxation by the State of California; that on said first Monday of March, A. D. 1900, to wit, on March 5th, noon, A. D. 1900, your orator held and owned \$963,099.88 of bonds of a miscellaneous character, to wit, bonds of corporations organized and acting under the laws of the State of California for the purpose of constructing, owning and operating railroads, and other bonds of a miscellaneous character, which bonds, on the day and year last named, as the corporate property of your orator, were and still are exempt under the laws of the United States and of the State of California, from assessment and taxation by the State of California; that the stock of your orator on said first Monday of March, A. D. 1900, to wit, March 5th, A. D. 1900, was not listed upon said Stock and Bond Exchange, and had not been for nearly a year prior thereto; that on or about February 28th, A. D. 1900, an unofficial sale of the stock of your orator was reported in said official publication known as the Stock and Bond Exchange at \$185 per share, since which time no sale of any of the stock of your orator has been reported in said publication said "Stock and Bond Exchange."

## 10.

That your orator is informed by said defendant, and verily believes, and, upon and according to such information and belief, charges the fact to be that said defendant, unless restrained therefrom by this Honorable Court

in making said assessment upon the shares of the capital stock of your orator, will make the same in manner following, that is to say: he will make allowance for exemptions as follows, to wit:

(1) For United States bonds... ..	\$2,142,400.00
(2) For fixtures.. .. .	3,450.00
(3) Taxes..... .	582.00
(4) Expenses..... .	16,240.00
	<hr/>
Total exemptions.. .. .	\$2,162,672.00

Which last-named sum he will divide by 30,000 shares of the capital stock of your orator, leaving \$72.08 as the amount of exemption upon each share of the capital stock of your orator.

That the value of the capital stock he will assess at \$185 per share, from which he will deduct said \$72.08, leaving the difference of \$112.92 which, for the purpose of assessment, he will treat as \$113, as the assessable value of each share of the capital stock of your orator.

That said defendant, as Assessor as aforesaid, in ascertaining and determining the value of the capital stock of your orator at \$185 per share as aforesaid, will ascertain and determine the same exclusively from the report thereof made in said Stock and Bond Exchange on said February 28th as hereinbefore stated, and not otherwise.

That in making said assessment said defendant will exclude from the amount of exemptions aforesaid the sum of \$265,284.05, the amount of the premium upon said United States bonds, claiming and insisting that while said Uni-

ted States bonds, are exempt from and not liable to assessment or taxation, the aforesaid premium thereon is liable to assessment and taxation.

That in ascertaining the market value of said stock in manner aforesaid, the market value of said bonds will be taken into account, including the premium thereof, but in ascertaining the amount of deductions to which the stock of your orator is and will be entitled in making said assessment, the amount of said premium will not be deducted.

That in making said assessment said defendant will exclude from the amount of exemptions to which your orator is and will be entitled as herein alleged, the aforesaid sum of \$2,276,917, cash on hand, and also said sum of \$963,099 of miscellaneous bonds, claiming and insisting that, although the same constitute part and parcel of the corporate property of your orator, the same nevertheless is not and will not be exempt from assessment and taxation under the laws of the United States and the State of California.

That in making said assessment said defendant, as Assessor as aforesaid, will not exclude from consideration and from constituting an element of the amount of such assessment the corporate property of your orator, except real estate, notwithstanding the same is and will be exempt under the constitution and laws of the United States and of the State of California from assessment and taxation.

## 11.

That under the laws of the State of California all shares of stock in corporations organized under the laws of said State are exempt from taxation, save and except of national bank associations, whose property, other than real estate, is by federal statute exempt from assessment and taxation.

That shares of stock of the par value of more than the sum of two hundred million of dollars are so exempted.

That shares of stock of the par value of thirty-three millions and upwards of corporations organized and existing and doing business under the laws of the State of California in the business of banking are by law exempt from taxation, and said defendant, as Assessor as aforesaid, has not and will not assess the same to the owners and holders thereof, or otherwise or at all, for the fiscal year ending June 30th, 1901, and does not intend to assess to the holders of such shares in such corporations the value of the same or to collect from such shareholders any taxes on such shares or the value thereof, by reason whereof said assessment upon the capital stock of your orator, assessed as aforesaid, will be in violation of and repugnant to the provisions of sections 5219 and 1977 of the Revised Statutes of the United States in that said taxation is and will be at a greater rate than is or will be assessed upon other moneyed capital in the hands of individual citizens in said State of California for said last-mentioned fiscal year.

And your orator further shows that the said pretended assessment and taxation, so to be made by said defendant

upon the shares of the capital stock of your orator is and will be in violation of and repugnant to the provisions of said section 5219 of the Revised Statutes of the United States, in that said taxation is and will be at a greater rate than is or will be assessed upon other moneyed capital in the hands of individual citizens of said State of California.

And in that behalf your orator further shows that in assessing and taxing said shares of stock of your orator no deductions can legally be made from the valuation of said shares or of any of them for debts unsecured by deed of trust, mortgage or other lien on real or personal property due or owing by the shareholders of your orator or any of them to bona fide residents of the State of California; and that, in assessing and taxing other moneyed capital in the form of solvent credits unsecured by deed of trust, mortgage or other lien on real or personal property due or owing to or in the hands of individual citizens of said State of California, a deduction is and will be made from said credits under and by the laws of the State of California of the debts unsecured by trust deed, mortgage or other lien on real or personal property as may be owing by such individual citizens or any of them to bona fide residents of the State of California, and that said assessment and taxation of the shares of your orator is and will be unjust, unlawful and illegal, and will discriminate against and upon such shares and against and upon the persons owning and holding the same, and compel them to sustain and bear more than their just share and burden of the taxes of said State of California.

And in this behalf your orator avers that it is informed and believes, and upon such information and belief states the fact to be, that the amount of moneyed capital in the City and County of San Francisco in said State, on the first Monday of March, A. D. 1900, to wit, on March 5th, 1900, at noon of said day, invested by banks and bankers having their principal place of business in said city and county, and residents therein, in unsecured solvent credits, and from which, under the constitution and laws of said State, unsecured debts can be deducted, was the sum of \$14,074,561; and on the day and year last aforesaid the amount of moneyed capital in the State of California, other than in the said City and County of San Francisco, invested by banks and bankers in unsecured solvent credits, and from which, under the constitution and laws of said State, unsecured debts can be deducted, was the sum of \$7,589,302; that on the day and year last aforesaid said banks and bankers in said City and County of San Francisco had debts unsecured by trust deed, mortgage or other lien on real or personal property, owing by such banks and bankers in said city and county, amounting to the sum of \$36,710,062; and that, on said day last aforesaid, the amount of debts unsecured by trust deed, mortgage or other lien on real or personal property owing by said banks and bankers in the State of California, other than in the said City and County of San Francisco, was the sum of \$32,400,304; that the amount of moneyed capital invested in such solvent credits by such banks and bankers on the day and year last aforesaid, as compared

with the amount of moneyed capital invested in the shares of the capital stock of your orator is so large and substantial that the assessment and taxation of the shares of the capital stock of your orator without being able to deduct therefrom debts unsecured by trust deed, mortgage or other lien, on real or personal property as may have been owing by the respective holders of the shares of the capital stock of your orator on the day and year last aforesaid, will be illegal and unjust discrimination against the owners and holders of the shares of the capital stock of your orator, and will make the taxation of such shares of stock at a greater rate than is imposed upon other moneyed capital in the hands of individual citizens in the State of California, and particularly in the City and County of San Francisco in said State

## 12.

That in making said assessment of said shares of the capital stock of your orator said defendant will not proceed in the manner directed by said act of the legislature of March 14th, 1899, in this: that in making such assessment to each stockholder of your orator he will not deduct from the value of his share of stock such sum as is in the same proportion to such value as the total value of its real estate and property exempt by law from taxation bears to the whole value of all the shares of the capital stock of your orator.

That on the first Monday of March, A. D. 1900, to wit, on March 5th, 1900, your orator had not, nor has it thence hitherto had, any real estate; and all of the property of



your orator was on said day, and has thence hitherto been, and still is exempt by law from assessment and taxation.

That if deduction of all the property of your orator exempt from assessment and taxation as last aforesaid were made to each stockholder in assessing said stock, there would remain nothing of value subject to assessment; and that the pretended assessment of said shares at said value of \$113 per share will be based wholly upon supposed and fictitious property, and upon property exempt by the constitution and laws of the United States from assessment and taxation.

## 13.

That in and by said section 3610 of said Political Code it is provided that in case the tax on any stock in a national bank is unsecured by real estate owned by the holder of such stock, then the bank in which said stock is held shall become liable therefor, and the Assessor shall collect the same from said bank, which may then charge the amount of the tax so collected to the account of the stockholder owning such stock, and shall have a lien prior to all other liens on said stock and the dividends and earnings thereof, for the reimbursement to it of the taxes so paid.

That the ownership of the shares of capital stock of your orator, or of any of them, may be and does change by endorsement and transfer of the certificate or certificates evidencing and representing any given number of such shares without there being any change in the name or names in which the said certificate or certificates stand on the books of your orator.

That while the stock of your orator on the first Monday of March, A. D. 1900, at noon of that day, may have been owned as the same appears upon the books of your orator and as the names of the owners thereof appear in the list of stockholders kept by your orator as hereinbefore alleged, yet intermediate that day and the day when the defendant, as Assessor as aforesaid, may call upon and demand payment from your orator of the tax to be levied thereon upon said assessment, the ownership of said stock may have wholly changed so that while your orator may have known who the owners of the same were on the first Monday of March, A. D. 1900, at noon of that day, yet at the time a demand upon your orator for payment of said tax by said defendant is made, your orator may be wholly unable to discover who will be the owners of the same, or to whose account the amount of tax so paid will or can be charged, and such owners may by that time have altogether ceased to have any account with your orator, or to hold or own any of the stock of your orator, and there may be neither stock nor dividends from which your orator can deduct or withhold payment of the amount of said tax in case it pay the same.

That, should your orator be compelled by said defendant, as Assessor, to pay said tax upon the stock of its stockholders as aforesaid, it would be impossible for your orator to charge the amount of said tax to the account of the various stockholders owning said stock, inasmuch as your orator may be wholly unable to know who were the real owners of such shares of stock or any of them, or who

or what stockholders were legally liable for the amount of such tax, by reason whereof the amount of the same would be irretrievably lost to your orator.

That if your orator shall pay the amount of said tax so as aforesaid to be levied, imposed and demanded by said defendant as aforesaid, and should attempt to charge the proportionate amount thereof to the persons in whose names the said shares of stock stood on said first Monday of March, A. D. 1900, to wit, March 5th, 1900, at noon on that day, or at any other time, on the books of your orator, according to the number of shares standing in its name, your orator would be subjected to and would be harassed by a great multiplicity of suits by and on behalf and at the instance of the several shareholders of your orator. And in this behalf your orator shows that any one or more of such stockholders would have the right of resisting and contesting the payment of any tax on any share or shares of the capital stock of your orator owned by such shareholder or shareholders, and would have the right to show that at 12 o'clock noon of said first Monday of March, A. D. 1900, he was not legally liable therefor, and that your orator had made payment of the same in its own wrong, in case it should have paid the same, and in case it should result that your orator made illegal payment of the same such illegal payment would constitute a breach of trust and illegal diversion of the corporate assets of your orator from the trust upon which it holds the same for the benefit of its creditors and shareholders.

## 14.

That the threatened seizure and sale by said defendant, as Assessor as aforesaid, of the personal property of and belonging to your orator, sufficient to raise the amount necessary to pay said sum of \$22,642.47, will, unless restrained by this Honorable Court, deprive your orator of its property without due process of law; and said pretended assessment and taxation and threatened seizure and sale are and will be contrary to and in violation of and repugnant to the rights and privileges of your orator under the provisions of the constitution and laws of the United States and under the provisions of the constitution and laws of the State of California, and particularly under the provisions of section 1 of article XIV of the Amendments of the Constitution of the United States, and under the provisions of the act of Congress of the United States known as the National Bank Act and under the provisions of section 1 of article XIII of the Constitution of the State of California.

And that said act of the Legislature of the State of California of March 14th, 1899, under and pursuant to which said defendant is claiming to act and is acting in threatening to make said pretended assessment and taxation and in threatening to make said seizure and sale, is repugnant to and in violation of the rights and privileges of your orator under the provisions of the Constitution and laws of the United States, and particularly under the provisions of section 1 of article XIV of the Amendments of the Constitution of the United States and un-

der the provisions of the act of Congress of the United States known as the National Bank Act, and under the provisions of section 1977 of Revised Statutes of the United States.

That if the provisions of said act of the legislature of March 14th, 1899, were constitutional and legally valid, your orator would thereunder only be protected in paying the delinquent tax of the stockholder who owned stock of your orator at 12 o'clock noon on said first Monday of March, A. D. 1900, and who did not own real estate to secure payment of the same, and would not be protected in paying said tax or any part thereof where such stock had theretofore actually changed in ownership and become the property of person or persons other and different from those persons really owning it at 12 o'clock noon of said first Monday of March, A. D. 1900, or who at that time might own real estate to secure payment of the tax upon said stock, ownership whereof was unknown to your orator at the time of making such payment. By reason of all of which your orator would be involved in great doubt and uncertainty as to its rights and duties in the premises, and exposed to the possibility of a great multiplicity of litigation, to the loss and detriment of all nondelinquent stockholders of your orator, as all such litigation must necessarily tend to diminish the funds of your orator to the loss and detriment of those rightfully and beneficially entitled thereto and therein.

## 15.

That this is a suit in equity of a civil nature, and that the matter in dispute exceeds, exclusive of interest and

costs, the sum or value of \$5,000, to wit, the sum of \$22,000 and upwards as hereinbefore alleged; and that this case is a suit arising under the constitution and laws of the United States, to wit, under the provisions of section 1 of article XIV of the Amendments of the Constitution of the United States and under the provisions of the act of the Congress of the United States known as the National Bank Act, and particularly under the provisions of section 5219 and section 1977 of the Revised Statutes of the United States.

## 16.

Your orator further shows that only in and under the process of this Honorable Court as a Court of Equity can it have relief or protection from the great multiplicity of suits at law or in equity to which it may be subjected by seizure and sale of any of its property in payment or satisfaction of the tax threatened to be collected by the threatened assessment said defendant, as Assessor as aforesaid, threatens to make, as hereinbefore alleged, collection and payment, of which said defendant gives out and threatens to make as hereinbefore stated.

In consideration whereof and forasmuch as your orator is remediless in the premises under the strict rules of the common law, and can have adequate relief only in a Court of Equity, where matters of this sort are properly cognizable and relievable, your orator prays that an injunction may issue out of this Court restraining and enjoining said defendant, as Assessor as aforesaid, and his successors, from making said threatened assessment and tax upon the

shares of the capital stock of your orator, and from listing in the assessment book prepared or to be prepared by the defendant for the fiscal year ending June 30th, 1901, or from listing in any other manner or at all in the said assessment book the or any of the shares of the capital stock of your orator, and from making the said threatened seizure and sale of the property of your orator, or from in any manner interfering with the said shares of the capital stock, or with the property of your orator, or from instituting any suit or suits, action or actions, against your orator for the collection of any taxes claimed to be due upon any of the shares of stock of your orator, and your orator prays that in the meantime and until the hearing hereof a preliminary restraining order and injunction pendente lite embracing all of the relief herein prayed for issue out of this Honorable Court directed to the said defendant, such preliminary restraining order and injunction to continue in force until the determination of the final hearing herein, and that, upon the final hearing of this cause, this Court do adjudge and declare said threatened assessment and all action thereunder, and the said statute under which said defendant threatens to make said assessment, illegal and void, and forever enjoin said defendant from making said threatened assessment, and that your orator may have all the injunctions herein prayed for made perpetual, and that your orator may have such other and further relief as this cause may require, as well as its costs.

May it please your Honors to grant unto your orator a writ or writs of subpoena, to be issued out of and under the Seal of this Honorable Court, and directed to the said defendant, Washington Dodge, as Assessor of the said City and County of San Francisco, commanding the said defendant to appear in this cause at some day certain to be named therein and to answer in the premises, but not under oath, answer under oath being expressly waived, and to abide by and perform such decree as may be rendered herein.

NEVADA NATIONAL BANK OF SAN FRANCISCO,

[Corporate Seal]      By ISAIAS W. HELLMAN,  
President.

By GEO. GRANT,  
Secretary.

T. I. BERGIN,  
Solicitor for Complainant.

City and County of San Francisco, }  
 Northern District of California. } ss.

George Grant, being duly sworn, says: That he is cashier and secretary of the Nevada National Bank of San Francisco, the complainant in the above-entitled cause; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated upon information and belief, and as to those matters that he believes it to be true. That the seal of said complainant, thereunto set is its true corporate



seal, and has been thereunto set by the authority and direction of the said complainant.

GEO. GRANT,

Cashier and Secretary.

Subscribed and sworn to before me this 25th day of April, A. D. 1900.

[Notary's Seal]

HOLLAND SMITH,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed April 25th, 1900. Southard Hoffman, Clerk.

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**Subpoena ad Respondendum.**

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Judicial Circuit,  
Northern District of California.*

IN EQUITY.

The President of the United States of America, Greeting;  
to Washington Dodge, as Assessor of the City and  
County of San Francisco, State of California.

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in San Francisco, on the fourth day of June, A. D. 1900, to answer a bill of complaint exhibited against you in said court by The Nevada National Bank of San Francisco, a national banking association organized and existing under and by virtue of the laws of the United

State, and to do and receive what the Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 25th day of April, in the year of our Lord, one thousand nine hundred, and of our Independence the 124th.

[Seal]

SOUTHARD HOFFMAN,

Clerk.

Memorandum Pursuant to Rule 12, Rules of Practice, for  
the Courts of Equity of the United States.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of June next, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken pro confesso.

SOUTHARD HOFFMAN,

Clerk.

United States Marshal's Office, }  
Northern District of California. }

I hereby certify that I received the within writ on the 25th day of April, 1900, and personally served the same on the 25th day of April, 1900, on Washington Dodge, as Assessor of the City and County of San Francisco, State of California, by delivering to and leaving with Washington Dodge, as Assessor of the City and County of San Francisco, State of California, said defendant named therein, at the City and County of San Francisco, in said District, an attested copy thereof, together with a certified

copy of the bill of complaint certified to by the clerk of the court.

San Francisco, April 25th, 1900.

JOHN H. SHINE,  
United States Marshal.  
By S. P. Monckton,  
Office Deputy.

[Endorsed]: Filed April 26, 1900. Southard Hoffman,  
Clerk.

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*In the Circuit Court of the United States, Ninth Judicial  
Circuit, Northern District of California.*

THE NEVADA NATIONAL BANK  
OF SAN FRANCISCO, a National  
Banking Association,

Complainant,

vs.

WASHINGTON DODGE, as Assessor  
of San Francisco, State of Califor-  
nia,

Respondent.

**Answer to Bill of Complaint.**

The answer of Washington Dodge, as Assessor of the City and County of San Francisco, State of California, respondent, in the bill of complaint, entitled The Nevada National Bank of San Francisco, complainant against Washington Dodge, as Assessor of the City and County of San Francisco, respondent.

This respondent, now and at all times hereafter saving to himself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill of complaint contained, for answer thereto, or to so much thereof as this respondent is advised it is material or necessary for him to make answer to, answering says:

I.

And admits the facts alleged in paragraph "First" of complainant's bill of complaint.

II.

And admits the facts alleged in paragraph "Second" of complainant's bill of complaint.

III.

And admits the facts alleged in paragraph "Third" of complainant's bill of complaint.

IV.

And admits and alleges that under and by virtue of the laws of the State of California all property, not exempt from taxation under the laws of the United States nor under the laws of the State of California belonging to, owned by, claimed by, in the possession or under the control of any person at twelve o'clock M. on the first Monday in March, in each year, is subject to assessment and taxation, and liable to be assessed and taxed, as by the laws of the State of California provided for the fiscal year ending on the 30th day of June of the next succeeding year.

V.

And admits the facts alleged in paragraph "Fifth" of complainant's bill of complaint.

VI.

And admits the facts alleged in paragraph "Sixth" of complainant's bill of complaint.

VII.

And admits the facts alleged in paragraph "Seventh" of complainant's bill of complaint.

VIII.

And respondent admits that on the first Monday in March, 1900, at 12 o'clock M. of said day, complainant owned and held the following personal property; \$2,070,000, of the bonds of the United States; the premium on said bonds having on said day and at said time been the sum of \$265,284.05, making the said \$2,070,000, of United States bonds with the premium thereon equal to the sum of \$2,335,284.05; \$2,276,917, in cash; but respondent denies that all of said hereinbefore enumerated property, or any thereof, is exempt from assessment or taxation under the laws of the United States or of the State of California; and respondent alleges that he has no information or belief upon the subject sufficient to enable him to answer and basing his denial on that ground denies that said property was or is all of the assets or property owned, or held by complainant at 12 o'clock M. of the 5th day of March, 1900.

## IX.

And respondent admits the further facts alleged in paragraph "9" of complainant's bill of complaint, saving and excepting that respondent denies that the United States bonds held by complainant, or the premium thereon, or the cash on hand, at 12 o'clock M. of the first Monday in March, 1900, or either or any thereof, are or were exempt under the laws of the United States, or of the State of California, or otherwise, or at all, from assessment or taxation.

And respondent alleges he has no information or belief upon the subject sufficient to enable him to answer, and basing his denial on that ground denies that on said first Monday in March, 1900, at noon of said day, complainant held or owned \$963,099.88 of bonds of corporations organized or acting under the laws of the State of California, for the purpose of constructing, owning or operating railroads, or other bonds of a miscellaneous character, and respondent denies that such bonds, or any of them, on the day or year last mentioned, as the corporate property of complainant, were or still are exempt under the laws of the United States or of the State of California; denies that the stock of complainant on said first Monday in March, 1900, was not listed upon said Stock and Bond Exchange, or had not been for nearly a year prior thereto.

## X.

And respondent admits, that unless restrained by this Honorable Court, in making the assessment of the capital

stock of complainant, he will make the same in the manner following, that is to say; he will make allowance by deduction as follows:

(1) For United States bonds.... .	\$2,142,400
(2) For fixtures..... .	3,450
(3) Taxes..... .	582
(4) Expenses..... .	16,240
	<hr/>
Total deductions..... .	\$2,162,672

Which last-named sum he will divide by 30,000 shares of the capital stock of complainant, leaving \$72.08 as the amount of deduction upon each share of the capital stock of complainant.

And respondent admits that the value of the capital stock of complainant is the sum of \$185 per share and the same will be assessed at said valuation; from which he will deduct the sum of \$72.08, leaving the difference of \$112.92, which, for the purposes of assessment and taxation, he will treat as the assessable value of each share of the capital stock of complainant.

But respondent denies that, in ascertaining or determining the value of the capital stock of complainant at \$185 per share he will ascertain or determine the same exclusively from the report thereof made in said Stock and Bond Exchange as hereinbefore stated, and in this behalf respondent alleges that he will ascertain and determine the market value of each share of the capital stock of complainant by considering the market value thereof as bought and sold and quoted on said Stock and Bond Ex-

change, on the first Monday in March, 1900, at 12 o'clock of said day, and by estimating and considering the dividends said stock was on said day and time paying to the owners and holders thereof, by considering the sworn statements made by the duly authorized officers of complainant to the Controller of Currency of the United States, and by considering the general reputation of the officers and manager of complainant and of complainant as bank and bankers.

And respondent admits that in making an assessment of the shares of the capital he will exclude from the amount of exemption the sum of \$265,284.05, the amount of the premium upon said U. S. Bonds, but respondent denies that he claims or insists, or has at any time or at all claimed or insisted that said U. S. bonds, or any thereof, are exempt or not liable to assessment or taxation.

And respondent admits in ascertaining the market value of said stock, the market value of said bonds will be taken into account, including the premium thereof, and that in ascertaining the amount of deductions to which the stock of complainant is or will be entitled in making such assessment, the amount of said premiums will not be deducted.

And respondent admits that in making such assessment he will not exclude from consideration or from constituting an element of the amount of such assessment the corporate property of complainant, except real estate and mortgages.



## XI.

And respondent denies the facts alleged in paragraph "Eleventh" of complainant's bill of complaint to and including lines 27, page 15 thereof, and each and all of them.

And respondent denies that such assessment and taxation upon the shares of the capital stock of complainant would, or will be in violation of, or repugnant to, or in violation of and repugnant to the provisions of section 5219 of the Revised Statutes of the United States, or any statute, in that such taxation would or will be at a greater rate than would or will, be assessed upon other moneyed capital in the hands of individual citizens in the State of California. And respondent denies that, in assessing and taxing the shares of the capital stock of complainant, no deduction would or will or can legally be made from the valuation of shares, or any of them, of debts unsecured by deed of trust, mortgage, or other lien on real or personal property due or owing by the stockholders of complainant, or by any of them, to bona fide residents of the State of California; and in this behalf respondent alleges, that unless restrained from making an assessment of the shares of the capital stock of complainant, by order of this Honorable Court, he will, in making such assessment, permit to be made and make a deduction from the valuation of such shares, and of each and all of them, of debts unsecured by deed of trust, mortgage or other lien on real or personal property, due or owing by the holders of such shares to bona fide residents of the State of California; alleges that heretofore, to wit, on or about the

23d day of March, 1900, respondent caused to be addressed and mailed to the stockholders of complainant, and to each of them, who owned, claimed, possessed or controlled any shares of the capital stock of complainant at 12 o'clock M. of the first Monday in March, 1900, a written notice, notifying such stockholders, and each and all of them, of the intention of respondent to assess such stock to such shareholders, and requesting them to call at the office of respondent, in the City Hall, in the City and County of San Francisco, State of California, and present such unsecured debts, due or owing to bona fide residents of the State of California or other exemptions, as they might have, and which, under the laws of the United States and of the State of California, are deductible from valuation of such shares of stock, that he might permit and make such deductions alleges that, in response to such notice and invitation numerous stockholders of complainant's capital stock have made return, as required and permitted by section 3629 of the Political Code of unsecured debts owned by them on the 5th day of March, 1900, at 12 o'clock M. due and owing to bona fide residents of the State of California, and have requested that such unsecured debts be deducted from that valuation of the shares of stock of complainant, which said deductions respondent is prepared to, and will unless restrained by order of this Honorable Court, make and allow from the valuation of said shares of stock.

And respondent alleges that he has no information or belief upon the subject sufficient to enable him to answer

and basing his denial on that ground denies that the amount of moneyed capital in the City and County of San Francisco, State of California, on the first Monday in March, 1900, at noon of said day, invested by banks and bankers, having their principal place of business in said City and County, or residents therein, is unsecured solvent credits, or from which, under the Constitution and laws of this State unsecured debts can be deducted, was or is the sum of \$14,074,561; or any other sum, or any part thereof; denies that on the day and year last aforesaid the amount of moneyed capital in the State of California other than in the City and County of San Francisco invested by banks or bankers in unsecured solvent credits, or from which, under the Constitution and laws of the State of California unsecured debts can be deducted, or otherwise, was the sum of \$7,589,302, or any other sum, or any part thereof; denies that on the day and year last aforesaid, said banks and bankers, at the City and County of San Francisco, had debts unsecured by trust deed, mortgage or other lien on real estate or personal property, owing by such banks or bankers in said City and County of San Francisco amounting to the sum of \$36,710,062, or any other amount, or any part thereof; denies that on said day last aforesaid the amount of debts unsecured by trust deed, mortgage or lien on real or personal property, owing by said banks or bankers, or otherwise, in the State of California, other than in the City and County of San Francisco, was the sum of \$32,400,304, or any other sum, or any part thereof; and respondent denies that the amount of

moneyed capital invested in such solvent credits by such banks or bankers on the day and year last aforesaid in the City and County of San Francisco or in the State of California as compared with the amount of moneyed capital invested in the shares of the capital stock of complainant, or otherwise, or at all, is so large and substantial, or large and substantial, that the assessment or taxation of the shares of the capital stock of complainant without deduction therefrom, or without being able to deduct therefrom, debts unsecured by trust deed, mortgage, or other lien on real or personal property, as may have been owing by the respective holders of the shares of the capital stock of complainant on the day and year last aforesaid, would or will be an illegal or unjust, or illegal and unjust or any discrimination at all against the owners or holders of the shares of the capital stock of complainant or would or will make the taxation of said shares of stock, or any of them, at a greater rate or at any rate other than is imposed upon other moneyed capital in the hands of individual citizens in the State of California, or particularly in the City and County of San Francisco, State of California. And respondent denies that the solvent credits hereinbefore referred to or any solvent credits so held as aforesaid by the banks or bankers in the City and County of San Francisco or in the State of California, are moneyed capital in the hands of individual citizens of the State of California which enter into competition for business, or otherwise, with complainant.

And in this behalf respondent is informed and believes

and upon such information and belief alleges the fact to be that the paid-up capital of Commercial Bank and Trust Companies engaged in the business of banking in the City and County of San Francisco, State of California, was on the first Monday in March, 1900, at 12 o'clock M. of said day, ever since has been, and now is the sum of \$9,899,615 and no more and that the reserve fund, undivided profits and surplus fund of said Commercial Banks and Trust Companies on the day and year last aforesaid aggregated the sum of \$10,444,447 and no more, making a total of \$20,344,062; that the market value of the shares of the capital stock of said Commercial Banks and Trust Companies, as bought and sold on the Stock and Bond Exchange, and in open market on the day and year last aforesaid was the sum of \$23,325,246 and no more; that the said Commercial Banks and Trust Companies own and have invested in U. S. bonds and other property exempt from taxation under the laws of the United States, and of the State of California the aggregate sum of \$15,109,422 and no more, that said banks and trust companies are or will be assessed for real and personal property, including solvent credits, owned, claimed, possessed or controlled by them on the first Monday in March, 1900, at 12 o'clock M. of said day, in the sum of \$14,794,628 or more.

And in this behalf respondent further alleges that the Commercial Banks and Trust Companies, and such and all of them entering into competition for business with complainant in the City and County of San Francisco and in the State of California were or will be assessed and taxed

for the fiscal year ending June, 30, 1901, at as great or **greater** a rate than is or will be imposed or assessed upon the shares of the capital stock of complainant.

## XII.

And respondent denies that in making said assessment of said shares of the capital stock of complainant he will not proceed in the manner directed by said act of the legislature of March 14, 1899, in this: that in making such assessment to each stockholder of complainant he will not deduct from the value of his share of stock such sum as is in the same proportion to such value as the total value of its real estate and property exempt by law from taxation bears to the whole value of all the shares of the capital stock of complainant.

And respondent denies that on the first Monday in March, 1900, or at any time, all the property of complainant, except its real estate and mortgages, was on said day, or has thence hitherto been, or still is exempt by law from assessment or taxation and in this behalf respondent alleges the fact to be that the personal property and assets, and each and all thereof of complainant, were on said day and at said time, and ever since have been, and now are, constituent elements in the estimation and determination of the value of the shares of the capital stock of complainant, on account of which the shareholders of complainant are entitled to no deduction or deductions whatsoever.

And respondent denies that, if deduction of all the property of complainant exempt from assessment or taxation

were made to each shareholder in assessing said stock, there would remain anything of value subject to assessment, or that the assessment of said shares at said value of \$112.92 per share, would or will be based wholly, or otherwise, or at all, upon the supposed or fictitious property, or upon property exempt by the Court or laws of the United States from assessment or taxation; and in this behalf respondent alleges that a full and entire deduction from the value of the shares of complainant will be permitted and made of the proportionate value per share of all property not included or permitted or required to be included by law in the estimation and determination of the value of the said shares, and of each of them, for purposes of assessment and taxation.

### XIII.

And respondent admits that in and by section 3610 of said Political Code it is provided that in case the tax on any stock in a national bank is unsecured by real estate owned by the holder of such stock, then the bank in which said stock is held shall be liable therefor and the Assessor shall collect the same from said bank, which may charge the amount of the tax so collected on the account of the stockholders owning such stock; and shall have a lien prior to all other liens on said stock and the dividends and earnings thereof for the reimbursement of it of the taxes so paid. Admits that the ownership of the shares of the capital stock of complainant, or any of them, may and does change by the endorsement and transfer of the certificate representing a given number of said shares with-

out there being any change in the name or names in which the said certificate or certificates stand on the books of complainant. Admits that while the shares of stock of complainant on the first Monday in March, 1900, at noon of said day, may have been owned as the same appear upon the books of complainant or as the names of the owners thereof appear in the list of stockholders kept by complainant, yet intermediate that day and the day when respondent may call upon or demand payment of complainant of the taxes to be levied, should respondent ever call upon or demand payment of such taxes from complainant the ownership of said shares of stock may have been changed but respondent denies that, while complainant may have known who the owners of said shares of stock were on the first Monday in March, 1900, noon of that day, at the time a demand upon complainant for payment of such tax may be made, respondent may or will be wholly or otherwise unable to discover who are the owners of the same, or to whose account the amount of such tax so paid will or can be charged, and in this behalf respondent is informed and believes, and upon such information and belief charges the fact to be that the shares of the capital stock of complainant standing on the books of complainant in the names of certain persons as aforesaid, at 12 o'clock on the first Monday in March, 1900, were actually claimed, owned, belonging to, in the possession or under the control of such person or persons on said day and at said time, and that the same ever since that day and hour have been and now are owned, claimed, belonging to, in



the possession of, or under the control of the same person or persons in whose name or names the said shares appeared upon the books of complainant as aforesaid.

And respondent denies that should complainant be compelled to pay a or any tax upon the shareholders, as provided in section 3610 of the Political Code, it would be impossible for complainant to charge the amount of such tax to the accounts of the respective stockholders or any such shares of stock, inasmuch as complainant be wholly or otherwise, unable to know who were the real owners of such shares of stock, or any of them, or who or what shareholders were legally liable for the amount of such tax, and denies that by reason of any such payment such tax or any part thereof, would be irretrievably, or otherwise, or at all, lost to complainant.

And respondent denies that, if complainant should pay the amount of such tax and should attempt to charge the proportionate amount thereof to the persons in whose names the said shares of stock stood on the first Monday in March, 1900, at noon of said day or at any other time, on the books of complainant, according to the number of shares standing in the name of each person, complainant would be subjected to or would be harassed by a great or any multiplicity of suits, or by any suits whatsoever, by or on behalf or at the instance of several or any stockholders of complainant. And respondent denies that any one or more of said stockholders, would have the right of resisting or contesting the payment of any tax on any share or shares of the capital stock of complainant owned by

such stockholders, or would have the right to show that at 12 o'clock M. of the first Monday in March, 1900, he was not legally liable therefor, or that complainant had made payment of said tax in its wrong, or otherwise, in the case it should pay the same; denies that in that case it would result that complainant had made illegal payment of said tax such illegal payment would constitute a breach of trust or illegal division of the corporate assets of complainant from the trust upon which it holds the same for the benefit of its creditors, or stockholders.

#### XIV.

And respondent denies that he has threatened the seizure or sale, or does now threaten the seizure or sale of any personal or other property belonging to complainant sufficient to raise the sum of \$22,642.47 or any other sum, or any part thereof, and denies if such seizure or sale should be made such seizure or sale would deprive complainant of its property without due process of law; and respondent denies that such seizure or sale would be contrary to or in violation or repugnant to the rights or privileges of complainant under or pursuant to the provisions of the Constitution or laws of the United States, or under or pursuant to, the provisions of the Constitution or the laws of the State of California, or particularly under or pursuant to the provisions of section 1, article XIV of the Constitution of the United States, known as the National Bank Act, or under or pursuant to the provisions of section 1, of article XIII of the Constitution of the State of California; or under or pursuant to the provisions of section 3608

of the Political Code of the State of California, as the same existed at 12 o'clock M., on the first Monday in March, 1900, or that the act of the legislature of the State of California of March 14, 1899, under and pursuant to which respondent might act in making said assessment and taxation or making said assessment or taxation or making such seizure or sale, is in violation of or repugnant to the rights or privileges of complainant under or pursuant to the provisions of the Constitution or laws of the United States, or particularly under or pursuant to the provisions of section 1, article XIV of the Constitution of the United States, or under or pursuant to the provisions of the act of Congress of the United States known as the National Bank Act, or any or all of such laws, constitutions, or provisions, or otherwise, or at all.

And respondent denies that, under the provisions of said Act of March 14, 1899, complainant would be protected only in paying the taxes of the stockholder or stockholders who owned stock of complainant at 12 o'clock M. on the first Monday in March, 1900, and who did not own real estate to secure the payment of the same, or would not be protected in paying said tax, or any part thereof, at the time of such payment by complainant, such shares had theretofore actually changed in ownership and had become the property of any person or persons other than or different from those persons owning it at 12 o'clock M. of the said first Monday in March, 1900, or had become the property of any person or persons who at the time of such payment by complainant might own

real estate to secure the payment of the tax on such shares of stock. And respondent denies that by reason of all or any such supposed or pretended facts complainant would be involved in great or any doubt or uncertainty as to its rights or duties in the premises or otherwise, or would be exposed to a great or any multiplicity of litigation, or any litigation, to the loss or detriment, or otherwise, of all or any nondelinquent stockholders of complainant.

#### XV.

And respondent denies that this is a suit in equity of a civil nature and in this behalf respondent alleges that the subject matter of said bill of complaint is not within the jurisdiction of a court of equity or cognizable therein.

#### XVI.

And respondent further submits to this Honorable Court that complainant has a full, complete, speedy and adequate remedy at law against respondent for all causes of action or causes of actions, stated or attempted to be stated in complainant's bill of complaint on file in this action; and he here claims the same benefits of the objection as if he had not demurred to the relief so sought.

Wherefore, this respondent having fully answered, confessed, traversed, and avoided and denied all the matters in the said bill of complaint material to be answered according to his best knowledge and belief, humbly prays this Honorable Court to enter its decree, that the respondent be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained, and for

such further and other relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

WASHINGTON DODGE, .

Assessor of the City and County of San Francisco, Respondent.

FRANKLIN K. LANE,  
Solicitor for Respondent.

I hereby certify that in my opinion the foregoing answer is well founded in point of law.

W. I. BROBECK,  
Of Counsel for Respondent.

State of California,  
City and County of San Francisco. } ss.

Washington Dodge, as Assessor of the City and County of San Francisco, State of California, respondent in the above entitled proceeding being first duly sworn says: That he is the respondent in the above-entitled action, that he has read the foregoing answer in said action, and knows the contents thereof, and that the same is true of his knowledge, except as to the matters which are therein on his information or belief, and as to those matters that he believes it to be true.

WASHINGTON DODGE.

Subscribed and sworn to before me this 2d day of June, 1900.

J. M. SEAWELL,  
Judge of the Superior Court of the City and County of San Francisco, State of California.

[Endorsed]: Service by copy of within original is hereby admitted this 3d day of June, A. D. 1900.

T. I. BERGIN,  
Solicitor for Complainant.

Filed June 4th, 1900. Southard Hoffman, Clerk.

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*In the Circuit Court of the United States, Ninth Circuit,  
Northern District of California.*

THE NEVADA NATIONAL BANK OF  
SAN FRANCISCO, a National Bank-  
ing Association,

vs.

WASHINGTON DODGE, as Assessor of  
the City and County of San Fran-  
cisco, State of California,  
Defendant.

No. 12,927.

### Replication.

The replication of the Nevada National Bank of San Francisco, complainant in the above-entitled cause:

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the answer of the defendant in the above-entitled cause, for replication thereunto saith:

That it will aver and prove its said bill in the above-entitled cause to be true, certain and sufficient in law to

be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true, all of which matters and things this repliant is and will be ready to aver and prove as this Honorable Court shall direct, and humbly prays as in and by its said bill it has already prayed.

T. I. BERGIN,  
Solicitor for Complainant.

T. I. BERGIN,  
Of Counsel for Complainant.

[Endorsed]: Received copy of the within replication  
this June —, 1900.

FRANKLIN K. LANE,  
Solicitor for Defendant.

Filed June 11th, 1900. Southard Hoffman, Clerk.

At a stated term, to wit, the March term, A. D. 1900, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the City and County of San Francisco, on Monday the 2d day of July, in the year of our Lord one thousand nine hundred. Present: The Honorable WILLIAM W. MORROW, Circuit Judge.

NEVADA NATIONAL BANK OF SAN  
FRANCISCO,

vs.

WASHINGTON DODGE, Assessor, etc.

No. 12,927.

**Order Allowing Complainant to File Supplemental Bill.**

Upon motion of T. I. Bergin, Esq., counsel for complainant herein, it was ordered that complainant be and he hereby is allowed to file a supplemental bill herein, and that upon complainant executing and filing a bond in double the amount the defendant is charged in said bill with seeking to collect from complainant, a temporary restraining order issue enjoining defendant from making the collection threatened, and that an order issue directing defendant to show cause why an injunction pendente lite should not issue herein.



*In the Circuit Court of the United States, Ninth Circuit,  
Northern District of California.*

THE NEVADA NATIONAL BANK OF  
SAN FRANCISCO, a National Bank-  
ing Association,

Complainant,

vs.

WASHINGTON DODGE, as Assessor  
of the City and County of San Fran-  
cisco, State of California,

Defendant.

### Supplemental Bill.

To the Judges of the Circuit Court of the United States  
for the Northern District of California, in the Ninth  
Circuit, Sitting in Equity:

The Nevada National Bank of San Francisco, a nation-  
al banking association, complainant in the above-entitled  
cause, respectfully shows to the Court that on April 25th,  
A. D. 1900, it filed its duly verified bill of complaint in  
equity in the above-entitled Court against Washington  
Dodge, as Assessor of the City and County of San Fran-  
cisco, State of California, wherein it did set forth:

1.

That on January 1st, A. D. 1898, your orator was, and  
at all times thence hitherto has been, and still is, a

national banking association, organized and existing under and by virtue of the laws of the United States, for carrying on the business of banking, as provided for and authorized by the provisions of the statutes of the United States in this behalf, with a capital stock of three millions of dollars, divided into thirty thousand shares of stock of the par value of one hundred dollars to each share; that the place where its banking-house and its operations of discount and deposit were and are carried on and its general business conducted, as authorized and provided for in its articles of association, is the City and County of San Francisco, State of California, where it has been and is doing business in this State, and where it has its principal place of business in this State.

## 2.

That Washington Dodge, the defendant above named, was, on January 1st, A. D. 1899, thence hitherto has been, and still is, the duly elected, qualified and acting Assessor of the City and County of San Francisco, State of California, and was and is a citizen of the State of California and a resident and inhabitant of said Northern District of California, and was and is the person and officer under and by virtue of the laws of the State of California authorized, as hereinafter more particularly set out, to assess taxes for and in the City and County of San Francisco.

## 3.

That by an act of the legislature of the State of California, approved March 7, 1881, entitled "An act to amend the Political Code of the State of California relating

to Revenue, by adding a new section to be known as section 3608 of said Code, and by amending sections 3607, 3617, 3627, 3629, 3650 and 3651 and 3652 of said code, and by repealing section 3640 of said code, all relative to revenue"—there was, among other things, on said 7th day of March, 1881, added to the Political Code of said State of California a new section numbered 3608, in the words and figures following, to wit:

“Shares of stock in corporations possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent, and the assessment and taxation of such shares, and also of the corporate property, would be double taxation. Therefore, all property belonging to corporations shall be assessed and taxed, but no assessment shall be made on shares of stock, nor shall any holder thereof be taxed therefor.”

That by an act of the legislature enacted on the 14th day of March, 1899, entitled “An act to amend Section 3608 of the Political Code of the State of California relating to the general revenue of the State and to property liable to taxation for the purpose of revenue, and to add new sections to be known as sections 3609 and 3610, and also relating to the general revenue of the State and to property liable to taxation for the purpose of revenue,” said section 3608 was, on said 14th day of March, 1899, amended so as to read as follows:

“3608. Shares of stock in corporations possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and repre-

sent, and the assessment and taxation of such shares and also all the corporate property would be double taxation. Therefor, all property belonging to corporations, save and except the property of national banking associations, not assessable by federal statute, shall be assessed and taxed, but no assessment shall be made of shares of stock in any corporation, save and except in national banking associations, whose property, other than real estate, is exempt from assessment by federal statute.”

That by said act of March 14th, 1899, there were on said 14th day of March, A. D. 1899, added to the said Political Code of the State of California, two new sections numbered respectively 3609 and 3610, and being respectively in the words and figures following, to wit:

“3609. The stockholders in every national banking association doing business in this State, and having its principal place of business located in this State, shall be assessed and taxed on the value of their shares of stock therein; and said shares shall be valued and assessed as is other property for taxation, and shall be included in the valuation of the personal property of such stockholders in the assessment of the taxes at the place, city, town, and county where such national banking association is located, and not elsewhere, whether the said stockholders reside in said place, city, town, or county, or not; but in the assessment of such shares, each stockholder shall be allowed all the deductions permitted by law to the holders of moneyed capital in the form of solvent credits, in the same manner as such deductions are allowed by the pro-

vision of paragraph six of section thirty-six hundred and twenty-nine of the Political Code of the State of California. In making such assessment to each stockholder there shall be deducted from the value of his shares of stock such sum as is in the same proportion to such value as the total value of its real estate and property exempt by law from taxation bears to the whole value of all the shares of capital stock in said national bank. And nothing herein shall be construed to exempt the real estate of such national bank from taxation. And the assessment and taxation of such shares of stock in said national banking associations shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this State.”

“3610. The Assessor charged by law with the assessment of said shares shall, within ten days after he has made such assessment, give written notice to each national banking association of such assessment of the shares of its respective shareholders; and no personal or other notice to such shareholders of such assessment shall be necessary for the purpose of this act. And in case the tax on any such stock is unsecured by real estate owned by the holder of such stock, then the bank in which said stock is held shall become liable therefor; and the assessor shall collect the same from said bank, which may then charge the amount of the tax so collected to the account of the stockholder owning such stock, and shall have a lien, prior to all other liens, on his said stock, and the dividends and earnings thereof, for the reimbursement to it of such taxes so paid.”

## 4.

That under and by virtue of the Constitution of the State of California all property not exempt from taxation under the laws of the United States and under the laws of the State of California, in the possession or under the control of any person, at 12 o'clock noon on the first Monday in March in each year, is subject to assessment and taxation as by the laws of said State of California provided for the fiscal year ending upon the 30th day of June of the next succeeding year, as hereinafter more particularly set out.

## 5.

That pursuant to the requirements of the Revised Statutes of the United States in that behalf, the president and cashier of your orator have at all times caused to be kept, and do now keep, in the office where the business of your orator is transacted, to wit, in said office in the City and County of San Francisco, a full and correct list of the names and residences of all of the shareholders of your orator, said list containing the number of shares held by each of said shareholders; that said list, during all of the times hereinafter mentioned has been, and is, during the business hours of each day in which business could have been or was legally transacted, subject to the inspection of said defendant; that on or about the 7th day of March, A. D. 1900, your orator, at the request of said defendant, gave and delivered to him a full and correct list of the names and residences of the shareholders of your orator, as the same appear on the full and correct list of share-

holders kept as aforesaid, showing the number of shares of its stock held by each of said shareholders, at 12 o'clock noon on the 5th day of March, A. D. 1900, said 5th day of March, A. D. 1900, being the first Monday in March, A. D. 1900; that the number of said shareholders at 12 o'clock noon on said first Monday in March, A. D. 1900, was two hundred and three (203).

## 6.

That under the provisions of the Constitution of the State of California the fiscal year in said State of California is from the first day of July of each year to the thirtieth day of June of the next succeeding year; and that, pursuant to the laws of said State, the Board of Supervisors of said City and County of San Francisco did, on September 18th, 1899, fix the rate of tax for said City and County for the fiscal year ending June 30th, 1900, at the rate of \$1.029 on each \$100 valuation of the taxable property upon the assessment books of said City and County for said fiscal year; and that the State Board of Equalization of said State of California, pursuant to the laws of the State of California in that behalf, at the time and in the manner provided therefor by law, did fix the rate of taxation for the fiscal year ending June 30th, 1900, on all property, both real and personal, in the City and County of San Francisco, at the rate of 60 cents and one mill on each \$100 of valuation of said property for said fiscal year; and thereafter, to wit, on September 18th, A. D. 1899, said Board of Supervisors of said City and

County of San Francisco did fix the rate of state taxation for the fiscal year ending June 30th, 1900, on all property of said City and County of San Francisco not exempt by law at the sum of 60 cents and one mill on each \$100 valuation of said taxable property upon the assessment roll for said fiscal year; the combined rate of taxes for said fiscal year for State, city and county purposes amounting to the sum of \$1.63 on each \$100 valuation of taxable property in said City and County of San Francisco.

## 7.

That under and by virtue of the laws of said State of California every tax due upon personal property is a lien upon the real property of the owner of said personal property from and after 12 o'clock noon of the first Monday of March in the year; and that, under and pursuant to the laws of the State of California, the defendant claims the right when any taxes on personal property are not a lien upon real property sufficient to secure the payment thereof, to collect all such taxes between the first Monday in March and the third Monday in July of each year; and under said laws said defendant claims the power to make such collection by seizure and sale of any personal property owned by the person against whom such tax is assessed, said sale to be of an amount of such personal property sufficient to pay the taxes, the percentage thereon provided by law, and the costs of sale; and that, under and by virtue of said laws, said defendant is governed as to the amount of taxes to be collected on such personal



property by the State and city and county rate of taxation for the previous fiscal year.

## 8.

That said defendant, as Assessor as aforesaid, has notified and informed your orator that he, as such Assessor is about to assess, and your orator verily believes that, unless restrained by this Honorable Court, he will, under and by virtue of the aforesaid act of the legislature of March 14th, 1899, amending the provisions of the Political Code of said State of California as hereinbefore set forth, and not otherwise, assess the shares of the capital stock of your orator at a valuation of \$113 per share for each and every share of the capital stock of your orator, and in case the tax on any of such stock is unsecured by real estate owned by the respective holders of such stock, then and in that event that he will collect, as provided in and by said section 3610 of said Political Code, the amount of such tax from your orator, at the hereinbefore alleged rate of taxation on the valuation of such shares. That the amount of such tax, at the rate of taxation for city, county and State purposes as aforesaid of \$1.63 upon the \$100 valuation of said stock as hereinbefore last stated, will amount to the sum of \$1.8419 upon each share of said capital stock; that on said first Monday of March, A. D. 1900, the taxes upon 12,293 shares of said capital stock were, thence hitherto have been, and still are unsecured by real estate owned by the holders of such stock; that the taxes upon said 12,293 shares of stock at the aforesaid valuation thereof and at the rate of taxation thereon here-

inbefore alleged will be the sum of \$22,642.47. And said defendant, as Assessor as aforesaid, has notified and informed and threatened your orator that said sum of \$22,642.47 will be collectible from your orator, and that as such Assessor, he will enforce payment and collection thereof from your orator, unless restrained from so doing by this Honorable Court; and your orator verily believes that said defendant, as Assessor as aforesaid, unless restrained therefrom by this Honorable Court, will carry out and execute his aforesaid threats to make said assessment upon the capital stock of your orator as hereinbefore stated, and to enforce collection and payment of the tax thereon of and from your orator as hereinbefore stated.

## 9.

That on January 1st, A. D. 1900, and long prior thereto, and thence hitherto, there was and is an association doing business in said City and County of San Francisco and known as and called the Stock and Bond Exchange; that said association is composed of members, stockholders admitted thereto, and none others; that said association, during the several periods of time herein last before stated, had, and has, a place of business in said City and County of San Francisco, whereat are sold stocks, bonds, United States bonds, and securities, at the board sessions thereof; that the manner of making such sales is as follows, that is to say: in open session of said board, whereat, however, only members of said board are admitted, the caller of said board calls off a list of the names of the several bonds, stocks and securities designed to be

offered for sale, and as he so calls off the same such broker as may desire to buy or sell any of the same publicly announces the amount he is willing to bid or offer therefor per share and the number of shares that he is willing to take or sell; whereupon the offering and bidding brokers, having agreed upon a purchase or sale, as the case may be, said caller publicly announces the same, and thereupon the purchasing broker pays for and accepts the delivery of the stocks, bonds or securities so bought, and pays therefor according to the terms of his bid. That only such stocks of corporations are sold at said board as are what are technically called listed thereon or listed upon said board; that is to say, such corporations as desire to list their stocks for sale at said board pay said board the sum of \$100 a year for so listing the same, which listing means that the stocks of the corporation so listed are regularly offered for sale at the official sales of said board, and only such stocks as are listed as aforesaid are offered for sale or sold at the official sales of said board, and only sales or offers for sale of such stocks are officially reported in the official report of the proceedings of said exchange; that where the stock of corporations is so listed, the sales or offers for sales thereof at said exchange are regularly reported from day to day in the official publication of the proceedings of said board, whether sales thereof actually take place or not; where sales thereof do not actually take place on the day the same are so reported, the rate of sale or offer for sale last actually had at said board is reported until such time from actual

sale or offer for sale of the same the price thereof may be changed. But the stocks of corporations not so listed thereon are never reported, and do not appear in said publication except where unofficial sale of the same may have been actually made after the regular sessions of said board.

That in making sales of stock in manner aforesaid, the value of the assets of the corporation whose stock may be sold or offered for sale constitutes a material inducement to the sale of the same, and in estimating such value, where the corporation holds United States bonds or other property or securities exempt from taxation, the market value of the same is taken into account, and not merely the face or par value of the same. That in making sales of stock in manner aforesaid, the prosperous condition and future prospects of the business of the corporation whose stock may be sold or offered for sale, as well as the known character of the management of the business for skill and ability are taken into account and form material elements in estimating the price of the stocks so sold and frequently the sale of stocks so sold and the price realized upon such sales are materially affected by combinations of purchasers or sellers at such sales formed for the purpose of depressing or raising the prices to be realized at such sales of said stocks; that while the value of the corporate assets of the corporation whose stock is thus sold or offered for sale constitutes a material inducement to such sales, the prices realized thereat are not exclusively based thereon, but in addition thereto are based upon

purely speculative and conjectural considerations without foundation in fact; that such market value of said bonds, stocks and other property fluctuates from day to day, sometimes amounting to a very large premium; that is to say, the premium upon stock is the amount of the market value thereof over and above the par or face value of the same, and the premium upon bonds is the market value of the same over and above the par or face value of the same.

That the aforesaid sales, made in manner aforesaid in the Stock and Bond Exchange aforesaid, are daily reported in a newspaper or periodical published twice a day under and by authority of the Stock and Bond Exchange aforesaid, and known as and called "The Stock and Bond Exchange"; that from the sales so made and reported in the Stock and Bond Exchange publication as aforesaid is ascertained the current market value of such stocks, bonds and securities as are offered for sale and sold as aforesaid. That on said first Monday of March, A. D. 1900, to wit, on March 5th, noon, A. D. 1900, your orator held and owned \$2,070,000 of bonds of the United States, under the laws of the United States, and of the State of California exempt from assessment and taxation by the State of California; that on the day and year last aforesaid the premium on said \$2,070,000 bonds was the sum of \$265,284.05, making said \$2,070,000 of United States bonds with the premium thereto equal to the sum of \$2,335,284.05; that on said first Monday of March, A. D. 1900, to wit, on March 5th, noon, A. D. 1900, your orator held and owned

the sum of \$2,276,917 in cash, exempt under the laws of the United States and of the State of California from assessment and taxation by the State of California; that on said first Monday of March, A. D. 1900, to wit, on March 5th, noon, A. D. 1900, your orator held and owned \$963,099.88 of bonds of a miscellaneous character, to wit, bonds of corporations organized and acting under the laws of the State of California for the purpose of constructing, owning and operating railroads, and other bonds of a miscellaneous character, which bonds, on the day and year last named, as the corporate property of your orator, were and still are exempt under the laws of the United States and of the State of California from assessment and taxation by the State of California; that the stock of your orator on said first Monday of March, A. D. 1900, to wit, March 5th, A. D. 1900, was not listed upon said Stock and Bond Exchange, and had not been for nearly a year prior thereto; that on or about February 28th, A. D. 1900, an unofficial sale of the stock of your orator was reported in said official publication known as the Stock and Bond Exchange at \$185 per share, since which time no sale of any of the stock of your orator has been reported in said publication, said "Stock and Bond Exchange."

## 10.

That your orator is informed by said defendant, and verily believes, and, upon and according to such information and belief, charges the fact to be that said defendant, unless restrained therefrom by this Honorable Court in making said assessment upon the shares of the capital

stock of your orator, will make the same in manner following, that is to say: he will make allowance for exemptions as follows, to wit:

(1) For United States Bonds.....	\$2,142,400.00
(2) For Fixtures... ..	3,450.00
(3) Taxes... ..	582.00
(4) Expenses..... ..	16,240.00
	<hr/>
Total Exemptions.....	\$2,162,672.00

Which last-named sum he will divide by 30,000 shares of the capital stock of your orator, leaving \$72.08 as the amount of exemption upon each share of the capital stock of your orator.

That the value of the capital stock he will assess at \$185 per share, from which he will deduct said \$72.08, leaving the difference of \$112.92 which, for the purposes of assessment, he will treat as \$113, as the assessable value of each share of the capital stock of your orator.

That said defendant, as Assessor as aforesaid, in ascertaining and determining the value of the capital stock of your orator at \$185 per share as aforesaid, will ascertain and determine the same exclusively from the report thereof made in said Stock and Bond Exchange on said February 28<sup>th</sup> as hereinbefore stated, and not otherwise.

That in making said assessment said defendant will exclude from the amount of exemptions aforesaid the sum of \$265,284.05, the amount of the premium upon said United States bonds, claiming and insisting that while said United States bonds are exempt from and not liable

to assessment or taxation, the aforesaid premium thereon is liable to assessment and taxation.

That in ascertaining the market value of said stock in manner aforesaid, the market value of said bonds will be taken into account, including the premium thereof, but in ascertaining the amount of deductions to which the stock of your orator is and will be entitled in making said assessment, the amount of said premium will not be deducted.

That in making said assessment said defendant will exclude from the amount of exemptions to which your orator is and will be entitled as herein alleged, the aforesaid sum of \$2,276,917, cash on hand, and also said sum of \$963,099 of miscellaneous bonds, claiming and insisting that, although the same constitute part and parcel of the corporate property of your orator, the same nevertheless is not and will not be exempt from assessment and taxation under the laws of the United States and the State of California.

That in making said assessment said defendant, as Assessor as aforesaid, will not exclude from consideration and from constituting an element of the amount of such assessment the corporate property of your orator, except real estate, notwithstanding the same is and will be exempt under the Constitution and laws of the United States and of the State of California from assessment and taxation.

11.

That under the laws of the State of California all shares of stock in corporations organized under the laws



of said State are exempt from taxation, save and except of national bank associations, whose property, other than real estate, is by federal statute exempt from assessment and taxation.

That shares of stock of the par value of more than the sum of two hundred million dollars are so exempted.

That shares of stock of the par value of thirty-three millions and upwards of corporations organized and existing and doing business under the laws of the State of California in the business of banking are by law exempt from taxation, and said defendant, as Assessor as aforesaid, has not and will not assess the same to the owners and holders thereof, or otherwise, or at all, for the fiscal year ending June 30th, 1901, and does not intend to assess to the holders of such shares in such corporations the value of the same, or to collect from such shareholders any taxes on such shares or the value thereof, by reason whereof said assessment upon the capital stock of your orator, assessed as aforesaid, will be in violation of and repugnant to the provisions of sections 5219 and 1977 of the Revised Statutes of the United States in that said taxation is and will be at a greater rate than is or will be assessed upon other moneyed capital in the hands of individual citizens in said State of California for said last mentioned fiscal year.

And your orator further shows that the said pretended assessment and taxation, so to be made by said defendant upon the shares of the capital stock of your orator is and will be in violation of and repugnant to the provisions of

said section 5219 of the Revised Statutes of the United States in that said taxation is and will be at a greater rate than is or will be assessed upon other moneyed capital in the hands of individual citizens of said State of California.

And in that behalf your orator further shows that in assessing and taxing said shares of stock of your orator no deduction can legally be made from the valuation of said shares or of any of them for debts unsecured by deed of trust, mortgage, or other lien on real or personal property due or owing by the shareholders of your orator or any of them to bona fide residents of the State of California; and that, in assessing and taxing other moneyed capital in the form of solvent credits unsecured by deed of trust, mortgage, or other lien on real or personal property due or owing to or in the hands of individual citizens of said State of California, a deduction is and will be made from said credits under and by the laws of the State of California of the debts unsecured by trust deed, mortgage or other lien on real or personal property as may be owing by such individual citizens or any of them to bona fide residents of the State of California, and that said assessment and taxation of the shares of your orator is and will be unjust, unlawful and illegal, and will discriminate against and upon such shares and against and upon the persons owning and holding the same and compel them to sustain and bear more than their just share and burden of the taxes of said State of California.

And in this behalf your orator avers that it is informed

and believes, and upon such information and belief states the fact to be, that the amount of moneyed capital in the City and County of San Francisco, in said State, on the first Monday of March, A. D. 1900, to wit, on March 5th, 1900, at noon of said day, invested by banks and bankers having their principal place of business in said city and county, and residents therein, in unsecured, solvent credits, and from which, under the constitution and laws of said State, unsecured debts can be deducted was the sum of \$14,074,561; and on the day and year last aforesaid the amount of moneyed capital in the State of California, other than in the said City and County of San Francisco, invested by banks and bankers in unsecured, solvent credits, and from which, under the constitution and laws of said State, unsecured debts can be deducted, was the sum of \$7,589,302; that on the day and year last aforesaid said banks and bankers in said City and County of San Francisco had debts unsecured by trust deed, mortgage or other lien on real or personal property, owing by such banks and bankers in said city and county, amounting to the sum of \$36,710,062; and that, on said day last aforesaid, the amount of debts unsecured by trust deed, mortgage or other lien on real or personal property owing by said banks and bankers in the State of California, other than in the said City and County of San Francisco, was the sum of \$32,400,304; that the amount of moneyed capital invested in such solvent credits by such banks and bankers on the day and year last aforesaid, as compared with the amount of moneyed capital invested in the shares

of the capital stock of your orator is so large and substantial that the assessment and taxation of the shares of the capital stock of your orator without being able to deduct therefrom debts unsecured by trust deed, mortgage, or other lien, on real or personal property as may have been owing by the respective holders of the shares of the capital stock of your orator on the day and year last aforesaid, will be illegal and unjust discrimination against the owners and holders of the shares of the capital stock of your orator, and will make the taxation of such shares of stock at a greater rate than is imposed upon other moneyed capital in the hands of individual citizens in the State of California, and particularly in the City and County of San Francisco, in said State.

## 12.

That in making said assessment of said shares of the capital stock of your orator, said defendant will not proceed in the manner directed by said act of the legislature of March 14th, 1899, in this; that in making such assessment to each stockholder of your orator he will not deduct from the value of his share of stock such sum as is in the same proportion to such value as the total value of its real estate and property exempt by law from taxation bears to the whole value of all the shares of the capital stock of your orator.

That on the first Monday of March, A. D. 1900, to wit, on March 5th, 1900, your orator had not, nor has it thence hitherto had, any real estate; and all of the property of

your orator was on said day, and has thence hitherto been, and still is exempt by law from assessment and taxation.

That if deduction of all the property of your orator exempt from assessment and taxation as last aforesaid were made to each stockholder in assessing said stock, there would remain nothing of value subject to assessment; and that the pretended assessment of said shares at said value of \$113 per share will be based wholly upon supposed and fictitious property, and upon property exempt by the Constitution and laws of the United States from assessment and taxation.

13.

That in and by said section 3610 of said Political Code it is provided that in case the tax on any stock in a national bank is unsecured by real estate owned by the holder of such stock, then the bank in which said stock is held shall become liable therefor, and the Assessor shall collect the same from said bank, which may then charge the amount of the tax so collected to the account of the stockholder owning such stock, and shall have a lien prior to all other liens on said stock and the dividends and earnings thereof, for the reimbursement to it of the taxes so paid.

That the ownership of the shares of capital stock of your orator, or of any of them, may be and does change by endorsement and transfer of the certificate or certificates evidencing and representing any given number of such shares without there being any change in the name

or names in which the said certificate or certificates stand on the books of your orator.

That while the stock of your orator on the first Monday of March, A. D. 1900, at noon of that day, may have been owned as the same appears upon the books of your orator and as the names of the owners thereof appear in the list of stockholders kept by your orator as hereinbefore alleged, yet intermediate that day and the day when the defendant, as Assessor as aforesaid, may call upon and demand payment from your orator of the tax to be levied thereon upon said assessment, the ownership of said stock may have wholly changed so that while your orator may have known who the owners of the same were on the first Monday of March, A. D. 1900, at noon of that day, yet at the time a demand upon your orator for payment of said tax by said defendant is made, your orator may be wholly unable to discover who will be the owners of the same, or to whose account the amount of tax so paid will or can be charged, and such owners may by that time have altogether ceased to have any account with your orator, or to hold or own any of the stock of your orator, and there may be neither stock nor dividends from which your orator can deduct or withhold payment of the amount of said tax in case it pay the same.

That, should your orator be compelled by said defendant, as Assessor, to pay said tax upon the stock of its stockholders as aforesaid, it would be impossible for your orator to charge the amount of said tax to the account of the various stockholders owning said stock, inasmuch as

your orator may be wholly unable to know who were the real owners of such shares of stock or any of them, or who or what stockholders were legally liable for the amount of such tax, by reason whereof the amount of the same would be irretrievably lost to your orator.

That if your orator shall pay the amount of said tax so as aforesaid to be levied, imposed and demanded by said defendant as aforesaid, and should attempt to charge the proportionate amount thereof to the persons in whose names the said shares of stock stood on said first Monday of March, A. D. 1900, to wit, March 5th, 1900, at noon on that day, or at any other time, on the books of your orator, according to the number of shares standing in its name, your orator would be subjected to and would be harassed by a great multiplicity of suits by and on behalf and at the instance of the several shareholders of your orator. And in this behalf your orator shows that any one or more of such stockholders would have the right of resisting and contesting the payment of any tax on any share or shares of the capital stock of your orator owned by such shareholder or shareholders, and would have the right to show that at 12 o'clock noon of said first Monday of March, A. D. 1900, he was not legally liable therefor, and that your orator had made payment of the same in its own wrong, in case it should have paid the same, and in case it should result that your orator made illegal payment of the same such illegal payment would constitute a breach of trust and illegal diversion of the corporate assets of your orator from the trust upon which it holds the same for the benefit of its creditors and shareholders.

## 14.

That the threatened seizure and sale by said defendant, as Assessor as aforesaid, of the personal property of and belonging to your orator, sufficient to raise the amount necessary to pay said sum of \$22,642.47, will, unless restrained by this Honorable Court, deprive your orator of its property without due process of law; and said pretended assessment and taxation and threatened seizure and sale are and will be contrary to and in violation of and repugnant to the rights and privileges of your orator under the provisions of the constitution and laws of the United States and under the provisions of the Constitution and laws of the State of California, and particularly under the provisions of section 1 of article XIV of the Amendments of the Constitution of the United States, and under the provisions of the act of Congress of the United States known as the National Bank Act and under the provisions of section 1 of article XIII of the Constitution of the State of California.

And that said act of the legislature of the State of California of March 14th, 1899, under and pursuant to which said defendant is claiming to act and is acting in threatening to make said pretended assessment and taxation and in threatening to make said seizure and sale, is repugnant to and in violation of the rights and privileges of your orator under the provisions of the Constitution and laws of the United States, and particularly under the provisions of section 1 of article XIV of the Amendments of the Constitution of the United States and under



the provisions of the act of Congress of the United States known as the National Bank Act, and under the provisions of section 1977 of Revised Statutes of the United States.

That, if the provisions of said act of the legislature of March 14th, 1899, were constitutional and legally valid, your orator would thereunder only be protected in paying the delinquent tax of the stockholder who owned stock of your orator at 12 o'clock noon on said first Monday of March, A. D. 1900, and who did not own real estate to secure payment of the same, and would not be protected in paying said tax or any part thereof where such stock had theretofore actually changed in ownership and become the property of person or persons other and different from those persons really owning it at 12 o'clock noon of said first Monday of March, A. D. 1900, or who at that time might own real estate to secure payment of the tax upon said stock, ownership whereof was unknown to your orator at the time of making such payment. By reason of all of which your orator would be involved in great doubt and uncertainty as to its rights and duties in the premises, and exposed to the possibility of a great multiplicity of litigation, to the loss and detriment of all nondelinquent stockholders of your orator, as all such litigation must necessarily tend to diminish the funds of your orator to the loss and detriment of those rightfully and beneficially entitled thereto and therein.

## 15.

That this is a suit in equity of a civil nature, and that the matter in dispute exceeds, exclusive of interest and costs, the sum or value of \$5,000, to wit, the sum of \$22,000, and upwards as hereinbefore alleged; and that this case is a suit arising under the Constitution and laws of the United States, to wit, under the provisions of section 1 of article XIV of the Amendments of the Constitution of the United States and under the provisions of the act of the Congress of the United States known as the National Bank Act, and particularly under the provisions of section 5219 and section 1977 of the Revised Statutes of the United States.

## 16.

Your orator further shows that only in and under the process of this Honorable Court as a Court of Equity can it have relief or protection from the great multiplicity of suits at law or in equity to which it may be subjected by seizure and sale of any of its property in payment or satisfaction of the tax threatened to be collected by the threatened assessment said defendant, as Assessor as aforesaid, threatens to make, as hereinbefore alleged, collection and payment, of which said defendant gives out and threatens to make as hereinbefore stated.

In consideration whereof and forasmuch as your orator is remediless in the premises under the strict rules of the common law, and can have adequate relief only in a Court of Equity where matters of this sort are properly cognizable and relievable, your orator prays that an injunction

may issue out of this Court restraining and enjoining said defendant, as Assessor as aforesaid, and his successors, from making said threatened assessment and tax upon the shares of the capital stock of your orator, and from listing in the assessment-book prepared or to be prepared by the defendant for the fiscal year ending June 30th, 1901, or from listing in any other manner or at all in the said assessment-book the or any of the shares of the capital stock of your orator, and from making the said threatened seizure and sale of the property of your orator, or from in any manner interfering with the said shares of the capital stock, or with the property of your orator, or from instituting any suit or suits, action or actions, against your orator for the collection of any taxes claimed to be due upon any of the shares of stock of your orator, and your orator prays that in the meantime and until the hearing hereof a preliminary restraining order and injunction pendente lite embracing all of the relief herein prayed for issue out of this Honorable Court directed to the said defendant, such preliminary restraining order and injunction to continue in force until the determination of the final hearing herein, and that, upon the final hearing of this cause, this Court do adjudge and declare said threatened assessment and all action thereunder, and the said statute under which said defendant threatens to make said assessment, illegal and void, and forever enjoin said defendant from making said threatened assessment, and that your orator may have all the injunctions herein prayed for made perpetual, and that your orator may have

such other and further relief as this cause may require, as well as its costs.

May it please your Honors to grant unto your orator a writ or writs of subpoena, to be issued out of and under the Seal of this Honorable Court, and directed to the said defendant, Washington Dodge, as Assessor of the said City and County of San Francisco, commanding the said defendant to appear in this cause at some day certain to be named therein and to answer in the premises, but not under oath, answer under oath being expressly waived, and to abide by and perform such decree as may be rendered herein.

That on April 25th, A. D. 1900, a subpoena in due form of law was issued upon said bill in equity and placed in the hands of the United States marshal of said District for service, who on the same day served the same upon the defendant therein, Washington Dodge, as Assessor of said City and County of San Francisco..

That on April 25th, A. D. 1900, the above-named Court made a restraining order now on file in said cause wherein and whereby it was ordered that Washington Dodge, as Assessor of the City and County of San Francisco, State of California, defendant in the above-entitled action, his agents, servants, and attorneys, and all persons acting by, through or under his authority do desist and refrain, and they are hereby restrained from making any assessment upon any of the capital stock of The Nevada National Bank of San Francisco, complainant in said action, for the fiscal year ending June 30th, A. D. 1901, and from

listing in the assessment-book prepared or to be prepared by you for the fiscal year ending June 30th, A. D. 1901, or otherwise, or in any manner or at all listing the or any of the shares of the capital stock of the complainant in said or in any assessment-book, and from making any assessment and tax upon the or any of the shares of the capital stock of the said Nevada National Bank of San Francisco for said last mentioned fiscal year, and from making any collection of any tax on any of the shares of the capital stock of The Nevada National Bank of San Francisco for the fiscal year ending June 30th, A. D. 1901, as alleged in said bill of complaint, and from seizing or selling any property of said complainant in the satisfaction of any tax upon any of the shares of the capital stock of The Nevada National Bank of San Francisco aforesaid based upon any assessment made or to be made by you for the fiscal year ending June 30th, A. D. 1901, and from instituting any suit or suits, action or actions, against said complainant for the collection of any of such tax, and from in any manner interfering with or molesting said complainant or disturbing it in the possession of its property for or by reason of your looking to the obtainment of payment or satisfaction of any tax upon any of the shares of its capital stock during the pendency of this action and until the further order of the Court, and at the same time in and by said order said Washington Dodge was required to show cause on May 7th, A. D. 1900, at 11 o'clock of that day, or as soon thereafter as counsel can be heard, at the courtroom of said Court, why an injunction pendente lite

should not be issued in the above-entitled cause restraining and enjoining said defendant as therein set forth, which restraining order and order to show cause were on the same day and year, to wit, on April 25th, A. D. 1900, duly served upon said Washington Dodge, as Assessor as aforesaid.

That thereafter, on June 4th, A. D. 1900, said defendant did file his answer therein, and thereafter, to wit, on June 11th, A. D. 1900, the complainant in said action did file its replication to the answer of the defendant therein, and thereafter said order to show cause regularly came on before the Court for hearing, and was thereupon submitted to the Court for decision, and afterwards, to wit, on June 25th, A. D. 1900, the Court did make its order wherein and whereby a preliminary injunction in said cause was denied and the pending restraining order was dissolved, without prejudice, however, to the right of the complainant upon a supplemental bill or other pleading to apply for an injunction if so advised to restrain the Assessor from collecting the tax after an assessment has been made, if one is made, and this order is made upon the condition that the complainant shall have the opportunity of making certain application to the Court before the collection of the tax is enforced or attempted to be enforced by the defendant.

That on June 30, A. D. 1900, said defendant, as Assessor of said City and County of San Francisco, did make his assessment of the aforesaid capital stock of your orator for the fiscal year in said bill of complaint alleged,

and the making whereof was sought to be restrained in and by said bill of complaint. That said assessment so actually made by said defendant is subject to the same objections in said bill alleged against the threatened assessment therein alleged, and said assessment so made is liable to all the legal objections in said bill of complaint alleged against the threatened assessment in said bill of complaint alleged, and your orator herein and hereby alleges that the assessment so made by said defendant is illegal, unconstitutional, and void for the reasons and in the respects in which in said bill the assessment therein mentioned as threatened to be made was and is alleged to be illegal, unconstitutional and void, and your orator prays that all and singular the averments in said bill of complaint contained in respect to the illegality and unconstitutionality of said threatened assessment may be deemed and taken to be herein repeated and alleged with respect to said assessment so actually made by said defendant with a like force and effect as if the averments in said bill contained in this behalf were herein repeated in full respect to said assessment so actually made.

That on June 30, A. D. 1900, said defendant, as Assessor of said City and County of San Francisco, informed and notified your orator that on Monday, July 2d, A. D. 1900, at one o'clock Meridian of that day, he, said defendant as Assessor of said City and County of San Francisco, would proceed to collect and enforce collection of the sum of \$20,879.04 of and from your orator for taxes founded and based upon said assessment so actually made

by him as hereinbefore last stated upon the shares of the capital stock of your orator owned by the stockholders thereof as in said bill of complaint alleged, and your orator avers that unless restrained by the order of this Honorable Court said defendant, as Assessor as aforesaid, will on Monday, July 2d, A. D. 1900, or as soon thereafter as he can, proceed to collect and enforce collection of said sum of \$20,879.04 of and from your orator for and in respect of and as taxes upon the shares of the capital stock of your orator as in said bill of complaint alleged, and will seize and sell the property of your orator therefor and otherwise enforce collection of the same unless restrained therefrom by this Honorable Court.

In consideration whereof, and forasmuch as your orator is remediless in the premises under the strict rules of the common law, and has no adequate relief only in this Honorable Court, where matters of this sort are properly cognizable and relievable, your orator prays that an injunction issue out of this Honorable Court restraining and enjoining said Washington Dodge, as Assessor of said City and County of San Francisco, State of California, his successors and all persons acting by, through or under him or them, or any of them, from collecting said sum of \$20,879.04, or any part thereof, and from making any seizure or sale of the property of your orator or of any of the stockholders of your orator, or from in any manner attempting to enforce collection or payment of said taxes upon the capital stock of your orator or upon any part of the same, or from in any manner interfering with the



shares of the capital stock of your orator or with the property of your orator or the property of any of the stockholders of your orator in consequence of their ownership of any of the shares of the capital stock of your orator, and restraining and enjoining said Washington Dodge, as Assessor as aforesaid, from instituting any suit or suits, action or actions against your orator or against any of the stockholders of your orator for or in respect of any of said sum of \$20,879.04, or any part or portion thereof, as a tax upon or for or on account of the ownership of any of said stockholders of any of the capital stock of your orator, and from the collection of any tax upon any of the capital stock of your orator or any part or portion of the same, and that this Honorable Court do adjudge and declare said assessment and the tax founded thereon illegal and void, and forever enjoin collection or enforcement of said tax or any part or portion of the same from your orator, as well as from any of the stockholders of your orator, and that in the meantime, and until the hearing hereof an injunction pendente lite issue herein restraining said defendant as herein and hereby prayed, and that such injunction continue in force until the determination herein, and that upon the final hearing of this cause it may have all the injunctions herein prayed for made perpetual, and that your orator may have such other and further relief as this cause may require, as well as costs.

May it please your Honors to grant unto your orator a writ or writs of subpoena to be issued out of and under

the seal of this Honorable Court and directed to said defendant, Washington Dodge, as Assessor of said City and County of San Francisco, commanding him to appear in this cause at some day certain to be named therein, and to answer in the premises, but not under oath, answer under oath being expressly waived, and to abide by and perform, such decree as may be rendered herein.

T. I. BERGIN,

Solicitor for Complainant.

Northern District of California,      }  
 City and County of San Francisco.    } ss.

George Grant, being first duly sworn, says: That he is the cashier and secretary of The Nevada National Bank of San Francisco, the complainant in the above-entitled cause; that he has read the foregoing supplemental bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

That the seal said complainant hereunto sets is its true corporate seal, and has been hereunto set by the authority and direction of said complainant.

GEO. GRANT.

Subscribed and sworn to before me this July 2, A. D. 1900.

[Seal] HOLLAND SMITH,  
Notary Public in and for the City and County of San  
Francisco, State of California.

THE NEVADA NATIONAL BANK OF SAN  
FRANCISCO.

[Corporate Seal] J. F. BIGELOW,  
Vice-President.

The defendant in the above-entitled cause having waived notice of application of complainant for leave to file the foregoing supplemental bill, it is hereby ordered that the complainant therein have, and it is hereby granted leave to file the foregoing supplemental bill.

Dated, San Francisco, July 2d, A. D. 1900.

WM. W. MORROW,  
Judge.

[Endorsed]: Filed July 2, 1900. Southard Hoffman,  
Clerk.

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Subpoena ad Respondendum on Supplemental Bill.

UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Judicial Circuit,  
Northern District of California.*

IN EQUITY.

The President of the United States of America, Greeting;  
to Washington Dodge, as Assessor of the City and  
County of San Francisco, State of California.

You are hereby commanded that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom, in San Francisco, on the sixth day of August, A. D. 1900, to answer a supplemental bill of complaint exhibited against you in said Court by The Nevada National Bank of San Francisco, a national banking association organized and existing under and by virtue of the laws of the United States, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 2d day of July, in the year of our Lord one thousand nine hundred, and of our Independence the 124th.

[Seal]

SOUTHARD HOFFMAN,

Clerk.

Memorandum Pursuant to Rule 12, Rules of Practice for the Courts of Equity of the United States.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of August next, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken pro confesso.

SOUTHARD HOFFMAN,

Clerk.

[Endorsed]:

United States Marshal's Office,

Northern District of California.

I hereby return that I received the within writ on the 3d day of July, 1900, and personally served the same on

the 5th day of July, 1900, on Washington Dodge, as Assessor of the City and County of San Francisco, by delivering to and leaving with Washington Dodge, as Assessor of said City and County said defendant named therein, at the City and County of San Francisco, in said District, an attested copy thereof.

San Francisco, July 5, 1900.

JOHN H. SHINE,  
United States Marshal.

By E. A. Morse,  
Office Deputy.

Filed July 7, 1900. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.*

THE NEVADA NATIONAL BANK OF  
SAN FRANCISCO, a National Banking Association,

Complainant,

vs.

WASHINGTON DODGE, as Assessor of  
the City and County of San Francisco,  
State of California,

Respondent.

**Answer to Supplemental Bill of Complaint.**

The answer of Washington Dodge, as Assessor of the City and County of San Francisco, State of California,

respondent in the supplemental bill of complaint, entitled "The Nevada National Bank of San Francisco, Complainant, against Washington Dodge, as Assessor of the City and County of San Francisco, Respondent."

This respondent now and at all times thereafter saving to himself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said supplemental bill of complaint contained, for answer thereto, or to as much thereof as this respondent is advised it is material or necessary for him to make answer to, answering says:

#### I.

And admits that The Nevada National Bank of San Francisco, a national banking association, Complainant in the above-entitled cause, did on the 25th day of April, A. D. 1900, file its duly verified, original bill of complaint in equity in the above-entitled Court against Washington Dodge, as Assessor of the City and County of San Francisco, State of California, in which said original bill of complaint there were set forth and alleged the matter and things set forth and alleged in paragraphs I to XV, inclusive, and paragraph XVI down to and including line 20, page 25 of complainant's supplemental bill of complaint.

And in this behalf, respondent alleges that on the 4th day of June, A. D. 1900, Washington Dodge, as Assessor of the City and County of San Francisco, filed his duly verified answer to complainant's original bill of complaint wherein he did set forth:

1.

And admits the facts alleged in paragraph "First" of complainant's bill of complaint.

2.

And admits the facts alleged in paragraph "Second" of complainant's bill of complaint.

3.

And admits the facts alleged in paragraph "Third" of complainant's bill of complaint.

4.

And admits and alleges that under and by virtue of the laws of the State of California all property, not exempt from taxation under the laws of the United States nor under the laws of the State of California belonging to, owned by, claimed by, in the possession or under the control of any person at twelve o'clock M. on the first Monday in March, in each year, is subject to assessment and taxation, and liable to be assessed and taxed, as by the laws of the State of California provided for the fiscal year ending on the 30th day of June of the next succeeding year.

5.

And admits the facts alleged in paragraph "Fifth" of complainant's bill of complaint.

6.

And admits the facts alleged in paragraph "Sixth" of complainant's bill of complaint.

## 7.

And admits the facts alleged in paragraph "Seventh" of complainant's bill of complaint,

## 8.

And respondent admits that on the first Monday in March, 1900, at 12 o'clock M. of said day, complainant owned and held the following personal property \$2,070,000 of the bonds of the United States; the premium on said bonds having on said day and at said time been the sum of \$265,284.05 making the said \$2,070,000 of United States bonds with the premium thereon equal to the sum of \$2,335,284.05; \$2,276,917 in cash; but respondent denies that all of said hereinbefore enumerated property, or any thereof, is exempt from assessment or taxation under the laws of the United States or of the State of California; and respondent alleges that he has no information or belief upon the subject sufficient to enable him to answer and basing his denial on that ground denies that said property was or is all of the assets or property owned, or held by complainant at 12 o'clock M. of the 5th day of March, 1900.

## 9.

And respondent admits the further facts alleged in paragraph "9" of complainant's bill of complaint, saying and excepting that respondent denies that the United States bonds held by complainant or the premium thereon, or the cash on hand, at 12 o'clock M. of the first Monday in March, 1900, or either or any thereof, are or were exempt under the laws of the United States, or of the State



of California, or otherwise; or at all, from assessment or taxation; And respondent alleges that he has no information or belief upon the subject sufficient to enable him to answer and basing his denial on that ground denies that on said first Monday in March, 1900, at noon of said day, complainant held or owned \$963,099.80 of bonds of corporations organized or acting under the laws of the State of California for the purposes of constructing, owning or operating railroads, or other bonds of a miscellaneous character, and respondent denies that such bonds or any of them, on the day or year last mentioned, as the corporate property of complainant, were or still are exempt under the laws of the United States or of the State of California; denies that the stock of complainant on said first Monday in March, 1900, was not listed upon said Stock and Bond Exchange, or had not been for nearly a year prior thereto.

**10.**

And respondent admits, that unless restrained by this Honorable Court, in making the assessment of the capital stock of complainant, he will make the same in the manner following; that is to say; he will make allowance by deduction as follows:

(1) For United States bonds.....	\$2,142,400
(2) For fixtures.....	3,450
(3) Taxes.....	582
(4) Expenses.....	16,240

Total deductions..... .. \$2,162,672

Which last-named sum he will divide by 30,000 shares of the capital stock of complainant, leaving \$72.08 as the amount of deduction upon each share of the capital stock of complainant.

And respondent admits that the value of the capital stock of complainant is the sum of \$185 per share and the same will be assessed at said valuation; from which he will deduct the sum of \$72.08 leaving the difference of \$112.92 which, for the purposes of assessment and taxation, he will treat as the assessable value of each share of the capital stock of complainant.

But respondent denies that, in ascertaining or determining the value of the capital stock of complainant at \$185 per share he will ascertain or determine the same exclusively from the report thereof made in said Stock and Bond Exchange as hereinbefore stated, and in this behalf respondent alleges that he will ascertain and determine the market value of each share of the capital stock of complainant by considering the market value thereof as bought and sold and quoted on said Stock and Bond Exchange on the first Monday in March, 1900, at 12 o'clock of said day, and by estimating and considering the dividends said stock was on said day and time paying to the owners and holders thereof, by considering the sworn statements made by the duly authorized officers of complainant to the Controller of Currency of the United States, and by considering the general reputation of the officers and manager of complainant and of complainant as bank and bankers.

And respondent admits that in making an assessment of the shares of the capital he will exclude from the amount of exemption the sum of \$265,284.05, the amount of the premium upon said United States bonds, but respondent denies that he claims or insists or has at any time or at all claimed or insisted that said United States bonds, or any thereof, are exempt or not liable to assessment or taxation.

And respondent admits in ascertaining the market value of said stock, the market value of said bonds will be taken into account, including the premium thereof, and that in ascertaining the amount of deductions to which the stock of complainant is or will be entitled in making such assessment, the amount of said premiums will not be deducted.

And respondent admits that in making such assessment he will not exclude from consideration or from constituting an element of the amount of such assessment the corporate property of complainant, except real estate and mortgages.

11.

And respondent denies the facts alleged in paragraph "Eleventh" of complainant's bill of complaint to and including line 27, page 15, thereof, and each and all of them.

And respondent denies that such assessment and taxation upon the shares of the capital stock of complainant would, or will be in violation of, or repugnant to or in violation of and repugnant to the provisions of section 5219 of the Revised Statutes of the United States, or any Stat-

ute, in that such taxation would, or will be at a greater rate than would or will, be assessed upon other moneyed capital in the hands of individual citizens in the State of California. And respondent denies that, in assessing and taxing the shares of the capital stock of complainant, no deduction would or will or can legally be made from the valuation of shares, or any of them, of debts unsecured by deed of trust, mortgage, or other lien on real or personal property due or owing, due or owing by the stockholders of complainant, or by any of them, to bona fide residents of the State of California; and in this behalf respondent alleges that unless restrained from making an assessment of the shares of the capital stock of complainant, by order of this Honorable Court, he will, in making such assessment, permit to be made and make a deduction from the valuation of such shares, and of each and all of them, of debts unsecured by deed of trust, mortgage or other lien on real or personal property, due or owing by the holders of such shares to bona fide residents of the State of California; alleges that heretofore, to wit, on or about the 23d day of March, 1900, respondent caused to be addressed and mailed to the stockholders of complainant, and to each of them, who owned, claimed, possessed or controlled any shares of the capital stock of complainant at 12 o'clock M. of the first Monday in March, 1900, a written notice, notifying such stockholders, and each and all of them, of the intention of respondent to assess such stock to such shareholders, and requesting them to call at the office of respondent, in the City Hall, in the City

and County of San Francisco, State of California, and present such unsecured debts, due or owing to bona fide residents of the State of California or other exemptions, as they might have, and which, under the laws of the United States and of the State of California, are deductible from the valuation of such shares of stock, that he might permit and make such deductions alleges that, in response to such notice and invitation numerous stockholders of complainant's capital stock have made return, as required and permitted by section 3629 of the Political Code of unsecured debts owned by them on the 5th day of March, 1900, at 12 o'clock M. due and owing to bona fide residents of the State of California, and have requested that such unsecured debts be deducted from that valuation of the shares of stock of complainant, which said deductions respondent is prepared to, and will, unless restrained by order of this Honorable Court, make and allow from the valuation of said shares of stock.

And respondent alleges that he has no information or belief upon the subject sufficient to enable him to answer and basing his denial on that ground denies that the amount of moneyed capital in the City and County of San Francisco, State of California, on the first Monday in March, 1900, at noon of said day, invested by banks and bankers, having their principal place of business in said City and County, or residents therein in unsecured solvent credits, or from which, under the Constitution and laws of this State unsecured debts can be deducted, was or is the sum of \$14,074,561; or any other sum, or any part

thereof; denies that on the day and year last aforesaid the amount of moneyed capital in the State of California other than in the City and County of San Francisco, invested by banks or bankers in unsecured solvent credits, or from which, under the constitution and laws of the State of California unsecured debts can be deducted, or otherwise, was the sum of \$7,589,302, or any other sum, or any part thereof; denies that on the day and year last aforesaid said banks or bankers, at the City and County of San Francisco, had debts unsecured by trust deed, mortgage or other lien on real or personal property, owing by such banks or bankers in said City and County of San Francisco, amounting to the sum of \$36,710,062, or any other amount, or any part thereof; denies that on said day last aforesaid the amount of debts unsecured by trust deed, mortgage or other lien on real or personal property, owing by said banks or bankers, or otherwise, in the State of California, other than in the City and County of San Francisco, was the sum of \$32,400,304, or any other sum, or any part thereof; and respondent denies that the amount of moneyed capital invested in such solvent credits by such banks or bankers on the day and year last aforesaid in the City and County of San Francisco, or in the State of California as compared with the amount of moneyed capital invested in the shares of the capital stock of complainant, or otherwise, or at all, is so large and substantial, that the assessment or taxation of the shares of the capital stock of complainant without deduction therefrom, or without being able to deduct there-

from, debts unsecured by trust deed mortgage, or other lien on real or personal property, as may have been owing by the respective holders of the shares of the capital stock of complainant on the day and year last aforesaid, would or will be an illegal or unjust, or illegal and unjust, or any discrimination at all against the owners or holders of the shares of the capital stock of complainant or would or will make the taxation of said shares of stock, or any of them, at a greater rate or at any rate other than is imposed upon other moneyed capital in the hands of individual citizens in the State of California, or particularly in the City and County of San Francisco, State of California. And respondent denies that the solvent credits hereinbefore referred to or any solvent credits so held as aforesaid by the banks or bankers in the City and County of San Francisco, or in the State of California, are moneyed capital in the hands of individual citizens of the State of California, which enter into competition for business, or otherwise, with complainant.

And in this behalf respondent is informed and believes and upon such information and belief alleges the fact to be that the paid-up capital of Commercial Bank and Trust Companies, engaged in the business of banking in the City and County of San Francisco, State of California, was on the first Monday in March, 1900, at 12 o'clock M. of said day, ever since has been, and now is the sum of \$9,889,615 and no more, and that the reserve fund, undivided profits and surplus fund of said Commercial Banks and Trust Companies, on the day and year last aforesaid aggregated

the sum of \$10,444,447, and no more, making a total of \$20,344,062; that the market value of the shares of the capital stock of said Commercial Banks and Trust Companies, as bought and sold on the Stock and Bond Exchange, and in open market on the day and year last aforesaid, was the sum of \$23,325,246, and no more; that the said Commercial Banks and Trust Companies own and have invested in United States bonds and other property exempt from taxation under the laws of the United States and of the State of California, the aggregate sum of \$15,109,422, and no more, that said banks and trust companies are or will be assessed for real and personal property, including solvent, credits, owned, claimed, possessed or controlled by them on the first Monday in March, 1900, at 12 o'clock M. of said day, in the sum of \$14,794,628, or more.

And in this behalf respondent further alleges that the Commercial Bank and Trust Companies, and such and all of them entering into competition for business with complainant in the City and County of San Francisco, and in the State of California, were or will be assessed and taxed for the fiscal year ending June 30, 1901, at as great or greater a rate than is or will be imposed or assessed upon the shares of the capital stock of complainant.

## 12.

And respondent denies that in making said assessment of said shares of the capital stock of complainant he will not proceed in the manner directed by said act of the legislature of March 14, 1899, in this; that in making such assessment to each stockholder of complainant he will not



deduct from the value of his share of stock such sum as is in the same proportion to such value as the total value of its real estate and property exempt by law from taxation bears to the whole value of all the shares of the capital stock of complainant.

And respondent denies that on the first Monday in March, 1900, or at any time all the property of complainant, except its real estate and mortgages, was on said day, or has thence hitherto been, or still is exempt by law from assessment or taxation and in this behalf respondent alleges the fact to be that the personal property and assets, and each and all thereof of complainant, were on said day and at said time, and ever since have been, and now are, constituent elements in the estimation and determination of the value of the shares of the capital stock of complainant, on account of which the shareholders of complainant are entitled to no deduction or deductions whatsoever.

And respondent denies that, if deduction of all the property of complainant exempt from assessment or taxation were made to each shareholder in assessing said stock, there would remain anything of value subject to assessment, or that the assessment of said shares at said value of \$112.92 per share, would or will be based wholly, or otherwise, or at all, upon the supposed or fictitious property, or upon property exempt by the Court or laws of the United States from assessment or taxation; and in this behalf respondent alleges that a full and entire deduction from the value of the shares of complainant will

be permitted and made of the proportionate value per share of all property not included or permitted or required to be included by law in the estimation and determination of the value of the said shares, and of each of them, for purposes of assessment and taxation.

13.

And respondent admits that in and by section 3610 of said Political Code it is provided that in case the tax on any stock in a national bank is unsecured by real estate owned by the holder of such stock, then the bank in which said stock is held shall be liable therefor and the Assessor shall collect the same from said bank, which may charge the amount of the tax so collected of the account of the stockholders owning such stock; and shall have a lien prior to all other liens on said stock and the dividends and earnings thereof for the reimbursement of it of the taxes so paid. Admits that the ownership of the shares of the capital stock of complainant, or any of them, may and does change by the endorsement and transfer of the certificate representing a given number of said shares without there being any change in the name or names in which the said certificate or certificates stand on the books of complainant. Admits that while the shares of stock of complainant on the first Monday in March, 1900, at noon of said day, may have been owned as the same appear upon the books of complainant or as the name of the owners thereof appear in the list of stockholders kept by complainant, yet intermediate that day and the day when respondent may call upon or demand payment of complain-

ant of the taxes to be levied, should respondent ever call upon or demand payment of such taxes from complainant the ownership of said shares of stock may have been changed, but respondent denies that, while complainant may have known who the owners of said shares of stock were on the first Monday in March, 1900, noon of that day, at the time a demand upon complainant for payment of such tax may be made, respondent may or will be wholly or otherwise unable to discover who are the owners of the same, or to whose account the amount of such tax so paid will or can be charged, and in this behalf respondent is informed and believes, and upon such information and belief charges the fact to be that the shares of the capital stock of complainant standing on the books of complainant in the names of certain persons as aforesaid, at 12 o'clock on the first Monday in March, 1900, were actually claimed, owned, belonging to, in the possession or under the control of such person or persons on said day and at said time, and that the same ever since that day and hour have been and now are owned, claimed, belonging to, in the possession of, or under the control of the same person or persons in whose name or names the said shares appeared upon the books of complainant as aforesaid.

And respondent denies that should complainant be compelled to pay a or any tax upon its shareholders, as provided in section 3610 of the Political Code, it would be impossible for complainant to charge the amount of such tax to the accounts of the respective stockholders or any such shares of stock, inasmuch as complainant be whol-

ly or otherwise, unable to know who were the real owners of such shares of stock, or of any of them, or who or what shareholders were legally liable for the amount of such tax, and denies that by reason of any such payment such tax or any part thereof, would be irretrievably, or otherwise, or at all, lost to complainant.

And respondent denies that, if complainant should pay the amount of such tax and should attempt to charge the proportionate amount thereof to the persons in whose names the said shares of stock stood on the first Monday in March, 1900, at noon of said day, or at any other time, on the books of complainant, according to the number of shares standing in the name of each person, complainant would be subjected to or would be harassed by a great or any multiplicity of suits, or by any suits whatsoever, by or on behalf or at the instance of several or any stockholders of complainant. And respondent denies that any one or more of said stockholders, would have the right of resisting or contesting the payment of any tax on any share or shares of the capital stock of complainant owned by such stockholders, he would have the right to show that at 12 o'clock M. of the first Monday in March, 1900, he was not legally liable therefor, or that complainant had made payment of said tax in its own wrong, or otherwise, in the case it should pay the same; denies that in that case it would result that complainant had made illegal payment of said tax such illegal payment would constitute a breach of trust or illegal division of the corporate assets of complainant from the trust upon which it holds the same for the benefit of its creditors or stockholders.

## 14.

And respondent denies that he has threatened the seizure or sale, or does now threaten the seizure or sale of any personal or other property belonging to complainant sufficient to raise the sum of \$22,642.47, or any other sum, or any part thereof, and denies if such seizure or sale should be made such seizure or sale would deprive complainant of its property without due process of law; and respondent denies that such seizure or sale would be contrary to or in violation or repugnant to the rights or privileges of complainant under or pursuant to the provisions of the Constitution or laws of the United States, or under or pursuant to, the provisions of the Constitution or the laws of the State of California, or particularly under or pursuant to the provisions of section 1, article XIV of the Constitution of the United States, known as the National Bank Act, or under or pursuant to the provisions of section 1, of article XIII of the Constitution of the State of California; or under or pursuant to the provisions of section 3608 of the Political Code of the State of California, as the same existed at 12 o'clock M. on the first Monday in March, 1900, or that the act of the Legislature of the State of California of March 14, 1899, under and pursuant to which respondent might act in making said assessment and taxation or making said assessment or taxation or making such seizure or sale, is in violation of or repugnant to the rights or privileges of complainant under or pursuant to the provisions of the Constitution or the laws of the United States, or particularly under or pursuant to

the provisions of section 1, article XIV of the Constitution of the United States, or under or pursuant to the provisions of the act of Congress of the United States known as the National Bank Act, or any or all of such laws, Constitutions, or provisions, or otherwise or at all.

And respondent denies that, under the provisions of said Act of March 14, 1899, complainant would be protected only in paying the taxes of the stockholder or stockholders who owned stock of complainant at 12 o'clock on the first Monday in March, 1900, and who did not own real estate to secure the payment of the same, or would not be protected in paying said tax, or any part thereof, at the time of such payment by complainant, such shares had theretofore actually changed in ownership and had become the property of any person or persons other than or different from those persons owning it at 12 o'clock M. of the said first Monday in March, 1900, or had become the property of any person or persons who at the time of such payment by complainant might own real estate to secure the payment of the tax on such shares of stock. And respondent denies that by reason of all or any such supposed or pretended facts complainant would be involved in great or any doubt or uncertainty as to its rights or duties in the premises or otherwise, or would be exposed to a great or any multiplicity of litigation, or any litigation, to the loss or detriment, or otherwise, of all or any nondelinquent stockholders of complainant.

## 15.

And respondent denies that this is a suit in equity of a civil nature and in this behalf respondent alleges that

the subject matter of said bill of complaint is not within the jurisdiction of a court of equity or cognizable therein.

16.

And respondent further submits to this Honorable Court that complainant has a full, complete, speedy and adequate remedy at law against respondent for all causes of action or causes of actions, stated or attempted to be stated in complainant's bill of complaint on file in this action; and he here claims the same benefits of the objection as if he had not demurred to the relief so sought.

Wherefore, this respondent having fully answered, confessed, traversed, and avoided and denied all the matters in the said bill of complaint material to be answered according to his best knowledge and belief, humbly prays this Honorable Court to enter its decree, that the respondent be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained, and for such further and other relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

II.

And respondent admits that on April 25th, A. D. 1900, a subpoena was issued in equity and placed in the hands of the United States marshal of said District for service, who on the same day served the same upon respondent.

Admits that on April 25th, A. D. 1900, the above-named Court made a restraining order now on file in said cause wherein and whereby it was ordered that respondent, as Assessor of the City and County of San Francisco, State

of California, his agents, servants, and attorneys, and all persons acting by, through, or under his authority do desist and refrain, and they were hereby restrained from making any assessment upon any of the capital stock of The Nevada National Bank of San Francisco, complainant in said action, for the fiscal year ending June 30th, A. D. 1901, and from listing in the assessment-book prepared or to be prepared by respondent for the fiscal year ending June 30, A. D. 1901, or otherwise, or in any manner or at all listing the or any of the shares of the capital stock of the complainant in said or in any assessment, and from making any assessment and tax upon the or any of the shares of the capital stock of the Nevada National Bank of San Francisco for said last mentioned fiscal year, and from making any collection of any tax on any of the shares of the capital stock of the Nevada National Bank of San Francisco for the fiscal year ending June 30th, A. D. 1901, as alleged in said bill of complaint, and from seizing or selling any property of said complainant in the satisfaction of any tax upon any of the shares of the capital stock of The Nevada National Bank of San Francisco aforesaid based upon any assessment made or to be made by respondent for the fiscal year ending June 30th, A. D. 1901, and from instituting any suit or suits, action or actions, against said complainant for the collection of any of such tax, and from in any manner interfering with or molesting said complainant or disturbing it in the possession of its property for or by reason of your looking to the obtaining of payment or satisfaction of any tax upon any of



the shares of its capital stock during the pendency of this action and until the further order of the Court, and at the same time in and by said order said respondent was required to show cause on May 7th, A. D. 1900, at 11 o'clock of that day, or as soon thereafter as counsel can be heard, at the courtroom of said Court, why an injunction pendente lite should not be issued in the above-entitled cause restraining and enjoining said defendant as therein set forth, which restraining and enjoining order and order to show cause were on the same day and year, to wit, on April 25th, A. D. 1900, duly served upon said respondent, as Assessor as aforesaid.

### III.

And respondent admits that thereafter on June 4th, A. D. 1900, respondent did file his verified answer therein, and thereafter, to wit, on June 11th, A. D. 1900, the complainant in said action did file its replication to the answer of the respondent therein, and thereafter said order to show cause came on regularly before the Court for hearing and was thereupon submitted to the Court for decision, and afterwards, to wit, on June 25th, A. D. 1900, the Court did make its order wherein and whereby a preliminary injunction in said cause was denied and the pending restraining order was dissolved without prejudice however, to the right of the complainant upon a supplemental bill, or other pleading, to apply for an injunction, if so advised, to restrain the respondent from collecting the tax after an assessment has been made, or one is made, and this order is made upon the condition

that the complainant shall have the opportunity of making certain application to the Court before the collection of the tax is enforced or attempted to be enforced by respondent.

#### IV.

That on June 30th, A. D. 1900, respondent, as Assessor of the City and County of San Francisco, did make an assessment of the aforesaid capital stock of The Nevada National Bank of San Francisco, complainant, for the fiscal year ending June 30th, 1901, and the making whereof was sought to be restrained in and by said original bill of complaint. But respondent denies that said assessment so actually made by respondent is subject to the same or any objections, or is subject to any objection or objections at all in said original bill alleged or otherwise against a threatened assessment therein alleged or any assessment; and respondent denies that said assessment so made is liable or other objections in said original bill of complaint or elsewhere alleged against the threatened assessment in said original bill of complaint alleged, or otherwise or at all; and respondent denies that the assessment so made by respondent is illegal, and unconstitutional and void, or illegal or unconstitutional or void for the reasons, or in the respects in which in said original bill of assessment therein mentioned was or is alleged to be illegal, or unconstitutional or void, and respondent denies that said assessment so made as aforesaid is illegal or void for any reason or reasons, or in any respect or respects, and respondent

prays that all and singular the assessments in said original bill of complaint contained in respect to the illegality or unconstitutionality of said threatened assessment may be deemed and taken to be herein repeated and denied with respect to said assessment so actually made by respondent, with a like force and effect as if the denials and averments in respondent's answer to said original bill of complaint contained in this behalf were herein repeated in full in respect to said assessment so actually made.

## V.

And respondent admits that on July 30th, A. D. 1900, respondent as Assessor of said City and County of San Francisco informed and notified complainant that on Monday, July 2, 1900, at one o'clock, P. M., of that day respondent as Assessor of the City and County of San Francisco would proceed to collect and enforce collection of the sum of \$20,879.04 of and from complainant for taxes founded and based upon said assessment so actually made by him as hereinbefore stated upon the shares of the capital stock of complainant owned by the shareholders thereof as in said bill of complaint alleged, but respondent denies that unless restrained by an order of this Honorable Court, respondent as Assessor as aforesaid will proceed to collect or enforce collection of said sum of \$20,879.04, or of any other sum or of any part thereof, of or from complainant for, or in respect of, or as taxes upon the shares of the capital stock of complainant, or that he will seize or sell the property of complainant therefor, or otherwise

enforce collection of the same unless restrained therefrom by this Honorable Court.

And in this behalf respondent alleges the facts to be that, under and by virtue of the Constitution and laws of the State of California and especially of section 3628 of the Political Code of said State, respondent is commanded and required, between the first Mondays in March and July of each year, in the discharge of his duties as Assessor of the City and County of San Francisco, to ascertain the names of all taxable inhabitants, and all the property in the County subject to taxation and to assess the same to the persons by whom it was owned or claimed, or in whose possession or control it was on the first Monday of March next preceding; that under and in accordance with the provisions of section 3820 and 3821 of the Political Code of said State respondent is commanded and required, at the time of the assessment of property as aforesaid, to collect the taxes on all property when, in his opinion, such taxes are not a lien upon real property sufficient to secure the payment of the same; that such collection may be made by seizure and sale of any personal property owned by the person against whom the tax is assessed at the time of making the assessment or at any time before the third Monday in July of each year, and not otherwise, or at any other time; that such collections can be made only upon receipts furnished respondent by the Auditor of the City and County of San Francisco which receipts such Auditor is authorized and required to furnish under and in accordance with section 3738 of the Political Code of said

State, and under and by the provisions of said section of said code respondent is required to return all unused receipts to such Auditor on the first Monday in August of each year; that the time during which respondent is authorized and empowered to make such collections, and especially the collection of the personal property taxes assessed against the shares of complainant, has heretofore, to wit, on the third Monday of July, 1900, wholly expired and terminated, and respondent is without any present or future power or authority to collect by seizure and sale or otherwise, or to receive or receipt for, any of said taxes so assessed as aforesaid.

## VI.

And respondent further submits to this Honorable Court that complainant has a full, complete, speedy, and adequate remedy at law against respondent for all causes of action, or causes of actions stated, or attempted to be stated in complainant's supplemental bill of complaint on file in this action; and he here claims the same benefits of the objection as if he had not demurred to the relief so sought.

Wherefore, this respondent having fully answered, confessed, traversed and avoided and denied all the matters in the said supplemental bill of complaint material to be answered, according to his best knowledge and belief, humbly prays this Honorable Court to enter its decree, that the respondent be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sus-

tained, and for such further and other relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

WASHINGTON DODGE,  
Assessor of the City and County of San Francisco, Respondent.

FRANKLIN K. LANE,  
Solicitor for the City and County of San Francisco, Respondent.

I hereby certify that in my opinion the foregoing answer is well founded in point of law.

FRANKLIN K. LANE,

[Endorsed]: Service by copy of within original is hereby admitted this 24th day of August, A. D. 1900.

T. I. BERGIN,  
Solicitor for Complainant.

Filed August 24, 1900. Southard Hoffman, Clerk. By  
W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit,  
Northern District of California.*

THE NEVADA NATIONAL BANK OF  
SAN FRANCISCO, a National Bank-  
ing Association,

Complainant,

vs.

WASHINGTON DODGE, as Assessor  
of the City and County of San Fran-  
cisco, and JOSEPH H. SCOTT, as  
Tax Collector of the City and County  
of San Francisco, State of California,  
Defendants.

No. 12,927.

**Replication to Answer to the Supplemental Bill of Complaint.**

The replication of The Nevada National Bank of San Francisco, complainant in the above-entitled cause, to the answer of the defendants to the supplemental bill of complaint filed therein shows that this repliant saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the answer of said defendants in the above-entitled cause to the supplemental bill of complaint therein saith: That it will aver and prove its supplemental bill in the above-entitled

cause to be true, certain, and sufficient in law to be answered unto, and that the said answer of said defendants is uncertain, untrue and insufficient to be replied unto by this repliant without this; that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true, all of which matters and things repliant is and will be ready to aver and prove as this Honorable Court shall direct, and humbly prays as in and by its bill it has already prayed.

T. I. BERGIN,

Solicitor for Complainant.

T. I. BERGIN,

Of Counsel for Complainant.

[Endorsed]: Received copy August 31st, 1900.

FRANKLIN K. LANE,

Solicitor for Defendants.

Filed August 31, 1900. Southard Hoffman, Clerk. By  
W. B. Beaizley, Deputy Clerk.



*In the Circuit Court of the United States, Ninth Circuit,  
Northern District of California.*

THE NEVADA NATIONAL BANK OF  
SAN FRANCISCO, a National Bank-  
ing Association,

Complainant,

vs.

WASHINGTON DODGE, as Assessor of  
the City and County of San Francisco,  
State of California, and JOSEPH H.  
SCOTT, as Tax Collector of said City  
and County,

Defendants.

No. 12,927.

**Second Supplemental Bill.**

To the Judges of the Circuit Court of the United States  
for the Northern District of California, in the Ninth  
Circuit, Sitting in Equity:

The Nevada National Bank of San Francisco, a national banking association, complainant in the above-entitled cause, respectfully shows to the Court that on April 25, A. D. 1900, it filed its duly verified bill of complaint in equity in the above-entitled Court against Washington Dodge, as Assessor of the City and County of San Francisco, State of California, wherein it did set forth:

## I.

The incorporation of said complainant as a national banking association under the laws of the United States with a capital stock of three million (\$3,000,000) of dollars, divided into thirty thousand (30,000) shares of stock of the par value of one hundred (\$100) dollars each share, and its place of business in said city and county of San Francisco, State of California, and that it is engaged in carrying on business as therein alleged.

## II.

That Washington Dodge is the duly elected, qualified and acting assessor of said City and County of San Francisco, State of California, and the person and officer authorized to assess taxes in and for said city and County of San Francisco as therein alleged.

## III.

That on March 7, 1881, the legislature of the State of California passed an act entitled "An act to amend the Political Code of the State of California, relating to revenue by adding a new section to be known as section 3608 of said Code, and by amending sections 3607, 3617, 3627, 3629, 3650, 3651, and 3652 of said code, and by repealing section 3640 of said code all relating to revenue" as in said bill of complaint set forth. That on March 14, 1899, the legislature of said State did pass an act entitled "An act to amend section 3608 of the Political Code of the State of California relating to the general revenue of the State, and to property liable to taxation for the pur-

poses of revenue, and to add new sections to be known as sections 3609 and 3610 also relating to the general revenue of the state and to property liable to taxation for the purposes of revenue" therein set forth.

#### IV.

That all property in the State of California not exempt from taxation under the laws of the United States and under the laws of the State of California in possession or under the control of any person at 12 o'clock noon on the first Monday in March in each year is subject to assessment and taxation as therein alleged for the year ending June 30, of the next succeeding year.

#### V.

That your orator, pursuant to the requirements of the Revised Statutes of the United States in that behalf, kept a list of its stockholders as therein set forth and alleged, and that the number of said stockholders at 12 o'clock noon on the first Monday in March, A. D. 1900, was 203.

#### VI.

That under the provisions of the Constitution of the State of California the fiscal year in said State of California is from the first Monday of July in each year to the 30th day of June of the next succeeding year. That pursuant to the laws of said State the Board of Supervisors of said City and County of San Francisco did, on September 18, 1899, fix the rate of tax for State, city and county for the fiscal year ending June 30, 1900, and the State Board of Equalization of said State of California,

pursuant to the laws of said State in that behalf, at the time and in the manner provided therefor by law, did fix the rate of taxation for the fiscal year ending June 30, 1900, on all property, both real and personal, in said City and County of San Francisco, at the rate in said bill of complaint set forth, and thereafter, to wit, on September 18, A. D. 1899, said Board of Supervisors did fix the rate of said taxation for the fiscal year ending June 30, 1900, on all property in said City and County of San Francisco not exempt by law at the sum of 60 cents and 1 mill on each \$100 of valuation of said taxable property upon the assessment-roll for said fiscal year. That the combined rate of taxes for said fiscal year for State, city and county purposes amounted to the sum of \$1.63 on each \$100 valuation of taxable property, as in said bill alleged.

## VII.

That under and by virtue of the laws of said State of California every tax due upon personal property is a lien upon the real property of the owner of said personal property from and after the first Monday of March in each year, and that the defendant Dodge claims that under and pursuant to the laws of said State, when any taxes on personal property are not a lien upon real property sufficient to secure the payment thereof, the right to collect all such taxes between the first Monday in March and the third Monday in July in each year, and said Dodge claimed the power to make such collection by seizure and sale of any personal property owned by the person against whom

such tax is assessed, together with costs, etc., as in said bill alleged.

VIII.

That said defendant, Washington Dodge, as Assessor as aforesaid, notified your orator that he would proceed to enforce collection of the same as in said bill of complaint alleged, and that the amount of such tax at the rate aforesaid upon the stock of the stockholders of your orator unsecured by real estate owned by the holders of such stock would amount in the aggregate to the sum of \$22,642.47, which said sum defendant Dodge, as Assessor, notified complainant that he would collect as aforesaid from your orator unless restrained therefrom as in said bill of complaint alleged.

IX.

That said defendant Dodge, as Assessor of said City and County of San Francisco, intended and threatened to assess the stock of your orator in the mode and manner in said bill of complaint alleged, and that the mode and manner in which he so threatened to make said assessment was and would be illegal, unconstitutional and void, as in said bill of complaint alleged and upon the grounds therein stated.

X.

That under the laws of the State of California all shares of stock in corporations organized under the laws of said State are exempt from taxation, save and except national bank associations, whose property, other than real estate, is by federal statute exempt from assessment

and taxation, and that assessing the same and the manner in which the property of such corporations is assessed will work a discrimination against the stock of your orator, and the taxation upon the stock of your orator would be at a greater rate than is or would be assessed upon other moneyed capital in the hands of individual citizens of said State of California, therein alleging the particulars in which such discrimination would consist.

#### XI.

That in making said assessment said Assessor would not proceed as provided and required in and by the provisions of the act of the legislature of March 14, 1899, therein alleged, and would depart therefrom in the particulars in said bill of complaint specified.

#### XII.

That under the provisions of said section 3610 of the Political Code therein mentioned, in case the tax on any stock in a national bank is unsecured by real estate owned by the holder of such stock, then the bank in which said stock is held shall become liable therefor, and the Assessor shall collect the same from said bank, which may then charge the amount of the tax so collected to the account of the stockholder owning such stock, and shall have a lien prior to all other liens on said stock, and the dividends and earnings thereof, for the reimbursement to it of the taxes so paid. That the ownership of such stock may and does change by endorsement and transfer of the certificates thereof without there being any change in the name or names in which said certificate or certificates

stand on the books of your orator, by reason whereof it would be impossible for your orator to safely pay said tax for the reasons and upon the grounds in said bill of complaint specified, whereby your orator would be subjected to a multiplicity of suits, as in said bill of complaint set forth.

### XIII.

That the threatened seizure and sale of the property of your orator to raise the amount necessary to pay said sum of \$22,642.47 would, unless restrained by this Honorable Court, deprive your orator of its property without due process of law, and that said assessment and taxation and threatened seizure and sale were and would be contrary to and in violation of and repugnant to the rights and privileges of your orator under the provisions of the constitution and laws of the United States and of the State of California therein mentioned, and that your orator would be remediless in the premises without the interposition of a court of equity.

### XIV.

That this suit is one in equity of a civil nature and that the matter in dispute, exclusive of interest and costs, exceeds the sum of \$5,000, to wit, the sum of \$22,000 and upwards, as therein alleged, and did therein and thereby pray that it be protected from a multiplicity of suits at law and in equity and pray for an injunction enjoining said Assessor from making said threatened assessment and taxation upon the shares of the capital stock of your orator and from listing in the assessment-book prepared

or to be prepared by said defendant Dodge, as Assessor, for the fiscal year ending June 30, 1901, or from listing in any other manner or at all in said assessment-book the or any of the shares of the capital stock of your orator and from making the said threatened seizure and sale of the property of your orator, or in any manner interfering with the shares of the capital stock or the property of your orator, and from instituting any suit or suits, action or actions against your orator for the collection of any tax claimed to be due upon any shares of the capital stock of your orator with a preliminary restraining order to the like effect; and that upon the final hearing this Court do adjudge and declare said threatened assessment and all action thereunder and the said statute under which said defendant Dodge threatened to make said assessment, illegal and void and forever enjoin him from making said threatened assessment, and that said injunction be made perpetual, and that your orator have such other and further relief as to the Court might seem meet in the premises, together with costs, and did pray subpoena to issue as therein and thereby prayed for.

#### XV.

That on April 25th, A. D. 1900, a subpoena in due form of law was issued upon said bill in equity and placed in the hands of the United States marshal of said district for service, who, on the same day, served the same upon the defendant therein, Washington Dodge, as Assessor of the City and County of San Francisco; that on April 25, A. D., 1900, the above-named Court made a restraining order, now on



file in said cause, wherein and whereby it was ordered that Washington Dodge, as Assessor of the City and County of San Francisco, State of California, defendant in the above-entitled action, his agents, servants and attorneys and all persons acting by, through or under his authority, do desist and refrain from, and they were thereby restrained from making any assessment upon any of the capital stock of The Nevada National Bank of San Francisco, the complainant in said action, for the fiscal year ending June 30, A. D. 1901, and from listing in the assessment-book prepared or to be prepared by him for the fiscal year ending June 30, A. D. 1901, or otherwise, or in any manner or at all listing the or any of the shares of the capital stock of complainant in said or in any assessment-book, and from making any assessment and tax upon the or any of the shares of the capital stock of The Nevada National Bank of San Francisco for said last-mentioned fiscal year and from making any collection of any tax on any of the shares of the capital stock of The Nevada National Bank of San Francisco for the fiscal year ending June 30, A. D. 1901, and from seizing or selling any property of said complainant in satisfaction of any tax upon any of the shares of the capital stock of The Nevada National Bank of San Francisco aforesaid, based upon any assessment made or to be made by him for the fiscal year ending June 30, A. D. 1901, and from instituting any suit or suits, action or actions, against the complainant, etc., as in said restraining order mentioned. That thereafter, on June 4, A. D. 1900, said defendant, Washington

Dodge, did file his answer therein, and thereafter, to wit, on June 11, A. D. 1900, the complainant in said action did file its replication to the answer of the defendant therein, and thereafter said order to show cause came regularly on before the Court for hearing, and was thereupon submitted to the Court for decision, and afterwards, to wit, on June 25, A. D. 1900, the Court did make its order wherein and whereby a preliminary injunction in said cause was denied and the pending restraining order was dissolved, without prejudice, however, to the right of the complainant upon a supplemental bill or other pleading to apply for an injunction, if so advised, to restrain the said assessor from collecting the tax after an assessment had been made, if one should be made, and said order dissolving said restraining order was made upon the condition that complainant should have the opportunity of making application to said Court before the collection of the tax was enforced or attempted to be enforced.

That in June 30, A. D. 1900, said defendant, as Assessor of said City and County of San Francisco, did make his assessment of the aforesaid capital stock of your orator for the fiscal year ending June 30, A. D. 1901, as in said bill of complaint alleged, and the making whereof was sought to be restrained in and by said bill of complaint. That thereafter, to wit, on July 2, A. D. 1900, your orator did file its duly verified supplemental bill of complaint therein setting forth the matters and things hereinbefore stated, and thereupon further alleging that on June 30, A. D. 1900, said defendant Dodge, as Assessor of said City

and County of San Francisco, did make his assessment of the aforesaid capital stock of your orator for the fiscal year ending June 30, A. D. 1901, as in said bill of complaint alleged, the making whereof was sought to be restrained in and by said bill of complaint. That said assessment so actually made by said defendant, Washington Dodge, was subject to the same objections in said bill alleged against the assessment, the alleged making whereof was in said bill of complaint described, and said assessment so made was and is liable to all the legal objections in said bill of complaint alleged against the threatened assessment in said bill of complaint alleged, and did therein and thereby allege that the assessment so made by said Washington Dodge was illegal, unconstitutional and void for the reasons and in the respects in which the threatened assessment in said bill of complaint was alleged to be illegal, unconstitutional and void, and that all the averments in said bill of complaint contained in respect to the illegality and unconstitutionality of the threatened assessment therein alleged might be deemed and taken to be repeated in respect to said assessment as actually made by said defendant with a like force and effect as if the averments in said bill contained in that behalf were therein repeated in full in respect to said assessment so actually made by said defendant, Washington Dodge.

That on June 30, A. D. 1900, said defendant, Washington Dodge, as Assessor of said city and County, informed and notified your orator that on Monday, July 2, A. D. 1900, at 12 o'clock Meridian of that day, he, said de-

fendant as Assessor of said City and County of San Francisco, would proceed to collect and enforce collection of the sum of \$20,879.04 of and from your orator for taxes founded and based upon said assessment so actually made by him as therein alleged upon the shares of the capital stock of your orator owned by the stockholders thereof as in said bill of complaint alleged, and your orator did therein aver that unless restrained by the order of this Honorable Court from so doing, said Assessor would, on July 2, A. D. 1900, or as soon thereafter as he could proceed to collect and enforce collection of said sum of \$20,879.04 of and from your orator for and in respect of and as taxes upon the shares of the capital stock of your orator as in said bill of complaint alleged, and would seize and sell the property of your orator therefor and otherwise enforce collection of the same unless restrained therefrom by this Honorable Court.

In consideration whereof your orator prayed the relief in and by said supplemental bill prayed, as will more fully appear upon reference to said supplemental bill now on file herein.

That afterwards, to wit, on said July 2, A. D. 1900, upon reading said duly verified bill of complaint in said cause and said duly verified supplemental bill of complaint, said Court did order as follows, that is to say:

“It is hereby ordered that the defendant in the above-entitled action, Washington Dodge, as Assessor of the City and County of San Francisco, State of California, show cause, if any he have, on August 6,

A. D. 1900, at the hour of 11 o'clock A. M. of that day, or as soon thereafter as counsel can be heard, at the courtroom of said Court in the Appraisers' Building situated on the northeast corner of Washington and Sanson streets, in said City and County of San Francisco, District aforesaid, why an injunction pendente lite should not issue in the above-entitled cause restraining and enjoining said defendant from collecting the sum of twenty-thousand, eight hundred and seventy-nine and four one-hundredths dollars (\$20,879.04) or any part or portion thereof, as a tax founded upon the assessment made by him upon the capital stock of The Nevada National Bank of San Francisco, the complainant in the above-entitled action, as in said bill and supplemental bill alleged for the fiscal year ending June 30, 1901, and from making any seizure or sale of any property of The Nevada National Bank of San Francisco aforesaid, or of any of the stockholders of The Nevada National Bank of San Francisco, or from in any manner attempting to enforce collection or payment of said taxes upon the capital stock of The Nevada National Bank of San Francisco, or upon any part of the same, or from in any manner interfering with the shares of the capital stock of The Nevada National Bank of San Francisco, or with the property of The Nevada National Bank of San Francisco, or the property of any of the stockholders of The Nevada National Bank of San Francisco in consequence of their ownership of any of the shares of the capital stock of The Nevada National Bank of San Francisco, and from instituting any suit or

suits, action or actions, against The Nevada National Bank of San Francisco, or any of the stockholders of The Nevada National Bank of San Francisco, for or in respect of any of said sum of twenty thousand, eight hundred and seventy-nine and four one-hundredths dollars (\$20,879.04), or any part or portion thereof, as a tax upon or for or on account of the ownership of any of the stockholders of any of the capital stock of The Nevada National Bank of San Francisco, and from the collection of any tax upon any of the capital stock of The Nevada National Bank of San Francisco, or any part or portion of the same, based or founded upon said assessment so made by said Washington Dodge, as Assessor as aforesaid, and in the meantime and until the further order of this Court said Washington Dodge, is hereby restrained from collecting the sum of twenty thousand, eight hundred and seventy-nine and four one-hundredths dollars (\$20,879.04), or any part or portion thereof, as a tax founded upon the assessment made by him upon the capital stock of The Nevada National Bank of San Francisco, the complainant in the above-entitled action as in said bill and supplemental bill alleged for the fiscal year ending June 30, 1901, and from making any seizure or sale of any property of The Nevada National Bank of San Francisco aforesaid, or any of the stockholders of The Nevada National Bank of San Francisco, or from in any manner attempting to enforce collection or payment of said taxes upon the capital stock of The Nevada National Bank of San Francisco, or upon any part of the same, or from in any manner interfering with the shares

of the capital stock of The Nevada National Bank of San Francisco, or with the property of The Nevada National Bank of San Francisco, or the property of any of the stockholders of The Nevada National Bank of San Francisco in consequence of their ownership of any of the shares of the capital stock of The Nevada National Bank of San Francisco, and from instituting any suit or suits, action or actions, against The Nevada National Bank of San Francisco, or against any of the stockholders of The Nevada National Bank of San Francisco for or in respect of any of said sum of twenty thousand, eight hundred and seventy-nine and four one-hundredths dollars (\$20,879.04), or any part or portion thereof as a tax upon or for or on account of the ownership of any of the stockholders of any of the capital stock of The Nevada National Bank of San Francisco, and from the collection of any tax upon any of the capital stock of The Nevada National Bank of San Francisco, or any part or portion of the same based or founded upon said assessment so made by said Washington Dodge, as assessor as aforesaid"; which order to show cause was thereafter, to wit, on July 2, 1900, duly served upon said Washington Dodge, as Assessor of the City and County of San Francisco by the United States marshal, the certificate of service of the same now remains on file in said action.

That after service of said restraining order upon said defendant, Washington Dodge, as Assessor of said City and County of San Francisco as aforesaid, and despite the same, said Washington Dodge did on July 2, 1900, com-

plete and deliver said roll as prepared and made by him to John A. Russell, clerk of the Board of Supervisors of the City and County of San Francisco, in which said assessment-roll was set down, the assessment and tax of the stockholders of the complainant in the above-entitled cause and as the same are contained and appear in the delinquent tax list of the City and County of San Francisco for the fiscal year ending June 30, 1901, published June 10, 1901, by said defendant, Joseph H. Scott, as Tax Collector of said City and County of San Francisco.

That the various persons named in said delinquent tax list assessed for shares in The Nevada National Bank of San Francisco in abbreviated form, as, for instance, first occurs Adler Dr. I, 50 shares, Nevada National Bank, were and are the shareholders and stockholders of complainant in the above-entitled action, the assessment and tax of whose stock said action was brought to enjoin and restrain and to restrain threatened seizure and sale of the personal property of said complainant in satisfaction of the tax levied upon the assessment of the capital stock of said complainant as in said bill and supplemental bill of complaint alleged.

That said stockholders of complainant whose stock was assessed by said Washington Dodge, as Assessor of said City and County of San Francisco as aforesaid, and whose stock said defendant, Joseph H. Scott, as Tax Collector of said City and County of San Francisco, gives notice that he will make sale of, and who are named in said delinquent tax list, are the following, to wit:



	A	Shares
1	Adler Dr. I.....	50
2	Allen Henry F.....	600
3	Arnold B.....	50
	B	
4	Bachman L. S.....	50
5	Bachman L. S. in trust.....	65
6	Do .....	60
7	Barth Jacob.....	5
8	Baruch Jacob.....	50
9	Baumann Sig.....	25
10	Bigelow, J. T.....	260
11	Bremer W. H.....	50
12	Burns Minnie E.....	12
	C	
13	Crocker H. S.....	100
	D	
14	Demond Alice Belle .....	12
	E	
15	Ehrman Clara H.....	35
16	Ehrman Jos.....	25
17	Ehrman S. W.....	20
	F	
18	Fleishman Mrs. Carrie....	15
	G	
19	Gatzert Babette.....	75
20	Gillon J.....	50

21	Goodhart Mrs. Hattie L.....	100
22	Goodwin Mrs Elizabeth .....	75
23	Greenebaum Wm.....	25
24	Guigne C. De.....	250

H

25	Hass Abe.....	100
26	Hass K.....	300
27	Hass Samuel.....	125
28	Harris Mrs Dora.....	50
29	Heller Mrs. Bella.....	100
30	Heller Clarence L.....	15
31	Heller Mrs. Clara H.....	200
32	Hellman H. W.....	250
33	Hellman Isaias W.....	5,215
34	Hellman Isaias W., Trustee.....	40
35	Hellman Isaias W., Jr.....	500
36	Hellman Louis M.....	50
37	Hinshelwood Miss Emilia....	13
38	Hirschler Mrs. Stella S.....	25
39	Hopkins Mrs. Mary K.....	525

J

40	Jewett W. F.....	25
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K

41	Kerckhoff Anton P.....	20
42	Kerckhoff Elise.. .....	12
43	Kerckhoff Elizabeth.....	7
44	Kerckhoff Wm. G.....	4
45	Kerckhoff H. H.....	7

45	Kent Mrs. Adaline E.....	25
46	Klau Leopold.....	100
47	Kline Louis & Co.....	50
48	Koshland Mrs. Florence S... ..	50

## L

49	Leege Chas. F.....	45
50	Levy Mrs Max.....	5
51	Lieberman J.....	100
52	Lyman D. B.....	300

## M

53	MacGavin Mrs. Kate....	12
54	Marshall Louis.....	40
55	Marshall Miss Nellie S.....	10
56	Martin W. O. H.....	100
57	Mitau Mrs. Fannie.....	12
58	Morse I. H.....	60
59	Moore Florence L. Mrs.....	12

## N

60	Newmark Mrs. Augusta.....	75
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## O

61	O'Connor M. P.....	200
62	Okell Chas. J.....	20

## P

63	Paige Calvin.....	250
64	Palmierir E. C.....	25
65	Parrott Louis B.....	150

R

66	Roos Achille.....	90
67	Roos Adolphe.....	130
68	Roos George H.....	40
69	Roos Leon L.....	40
70	Rosenberg Mrs. Lena.....	25
71	Rosenfelds John Sons.....	300
72	Rothschild Simon.....	50
73	Rothschild Wm.....	50
74	Ruddock Mrs. Maria N. Exec.....	200

S

75	Sachs Miss Carrie.....	12
76	Sachs David.....	50
77	Sachs D. M.....	22
78	Sachs Edgar D.....	22
79	Sachs Miss Hattie.....	12
80	Sachs Samuel.....	100
81	Sagendorph Mary Demond.....	12
82	Simpkins Mrs. Kate R.....	100
83	Son Bros. & Co.....	50
84	Strassburger Mrs. Julia.....	25
85	Sutro Alfred.....	10
86	Sutro Gustav.....	80
87	Sutro & Co.....	50

U

88	Union Trust Co., Pledgee.....	200
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V

89	Van Nuys I. N.....	250
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## \* W

90	Walter Clarence R.....	25
91	Walter Emanuel.....	500
92	Weiler Marks.....	125
93	Wolfskill John.....	100
94	Wyman Henry C.....	25

That after the Board of Supervisors of said City and County of San Francisco as Board of Equalization had equalized the assessments contained in said assessment list so prepared and made by said Washington Dodge, as Assessor as aforesaid, the same was delivered to the Auditor of said City and County of San Francisco within the time and in the manner prescribed therefor by law, and thereafter within the time and in the manner prescribed therefor by law said Auditor did deliver a copy of the corrected assessment-book styled "Duplicate Assessment-Book" prepared and authenticated in the manner and form prescribed by law to the Tax Collector of said City and County of San Francisco. That on June 4, A. D. 1900, and long prior thereto and thence hitherto, said J. H. Scott, was and is the lawfully acting and qualified Tax Collector of said City and County of San Francisco, and as such has and now holds said corrected assessment-book styled "Duplicate Assessment-Book"; that on June 10, 1901, said Joseph H. Scott, as Tax Collector of said City and County of San Francisco as aforesaid, prepared and published in the manner and form prescribed by law a delinquent

tax list containing the names of the aforesaid stockholders of complainant with their assessment for and on account of their shares of the capital stock in complainant with the amount of tax levied and to be collected thereon, and appended to said delinquent tax list so published as aforesaid said Joseph H. Scott, did set forth a notice wherein and whereby he did give notice that default having been made in the payment of taxes due to the State of California, and to the City and County of San Francisco for the year ending June 30, 1901, upon the personal property, real estate and state poll tax therein described, he, said Joseph H. Scott, as Tax Collector, of said City and County of San Francisco, State of California, by virtue of the power and authority in him vested by law, did upon the 26th day of November, 1900, levy upon the said personal property, and did upon Monday the 29th day of April, 1901, levy upon the said roll prepared, and that as such Tax Collector he will upon Monday, the 24th day of June, 1901, at the hour of 11 o'clock A. M. sell the same to the State in the Tax Collector's office in said City and County, unless the delinquent taxes, together with the costs and penalties, are paid. That said notice has been prepared and published by said Joseph H. Scott, Tax Collector as aforesaid, and that unless restrained therefrom by this Honorable Court, he, said Joseph H. Scott, as Tax Collector as aforesaid, will sell the shares of stock of the stockholders of your orator in said delinquent tax list specified, as well as other property, unless restrained therefrom by this Honorable Court, wherein and whereby

and by means whereof the whole aim and purpose of said suit commenced by your orator against said Washington Dodge, as Assessor as aforesaid, and the process of this Honorable Court made and issued, and to be made and issued therein, will be wholly avoided, defeated and made frustrate.

That at the time said Joseph H. Scott, Tax Collector as aforesaid, received said duplicate assessment-book, to wit, on the 8th day of October, 1900, as well as at the time that he made and published said delinquent tax list as aforesaid, he well knew of the pendency of the above-entitled suit and the nature and purpose thereof, and that therein and thereby complainant sought to have said assessor restrained from making said assessment and restrained from enforcing the same, and having this Honorable Court adjudge and declare as in and by said bill and supplemental bill of complaint was prayed, and that at the time said Joseph H. Scott, as Tax Collector as aforesaid, made and published said delinquent tax list he then and there well knew that sale of said stock as by him therein and thereby notified to be made would wholly defeat and frustrate the purposes of said suit, yet despite the premises he, said Joseph H. Scott, as Tax Collector as aforesaid, has prepared and published said delinquent tax list in the manner aforesaid, and has given out and proclaimed in manner aforesaid his purpose to sell the stock of the stockholders of your orator, sale whereof is sought to be restrained in and by said original and supplemental bill of complaint. That said Joseph H. Scott, as Tax Col-

lector as aforesaid, made no sale or offer for sale of any of the shares of the capital stock of The Nevada National Bank of San Francisco aforesaid, assessed in manner aforesaid in said assessment so actually made by said defendant, Washington Dodge, as assessor as aforesaid, for or during or in any part of the year, A. D. 1900, and did not at the time of the collection of taxes upon personal property collect any tax upon any of the aforesaid stock of The Nevada National Bank of San Francisco aforesaid, although the same and every of the same was wholly unsecured by any lien upon any real estate.

In consideration whereof and forasmuch as your orator is remediless in the premises under the strict rules of the common law and has no adequate relief only in this Honorable Court where matters of this sort are properly cognizable and relievable, your orator, prays that an injunction issue out of this Honorable Court restraining and enjoining not only said Washington Dodge, as assessor as aforesaid, but likewise said Joseph H. Scott, as Tax Collector of said City and County of San Francisco, their and each of their successors, from making said threatened sale of the property of said stockholders, as well as the property of your orator, or from in any manner attempting to enforce collection or payment of the taxes upon the capital stock of your orator, or upon any part of the same founded upon said assessment, or from in any manner interfering with the shares of the capital stock of your orator or with the property of your orator or the property of any of the stockholders of your orator in consequence



of their ownership of any of the shares of the capital stock of your orator, and restraining and enjoining said Washington Dodge, as Assessor as aforesaid, and said Joseph H. Scott, as Tax Collector as aforesaid, or either of them, from instituting any suit or suits, action or actions, against your orator, or against any of the aforesaid stockholders of your orator hereinbefore enumerated for or on account of their ownership of any of the capital stock of your orator, and from the collection of any tax upon any of the capital stock of your orator, or any part or portion of the same founded upon said assessment, and that this Honorable Court do adjudge and declare said assessment and said tax illegal and void and forever enjoin the collection of the same from your orator, as well as from any and all of the shareholders of your orator, and that in the meantime and until the hearing hereof an order to show cause be directed to said defendants and issue out of this Honorable Court commanding said Washington Dodge, as assessor as aforesaid, and said Joseph H. Scott, as Tax Collector, as aforesaid, at a date and time to be fixed in said order to show cause before this Honorable Court, if any they have, why your orator should not have an injunction pendente lite, embracing all of relief herein prayed for, such injunction to continue in force until determination of the hearing of a writ of injunction herein, and that at the hearing of such order to show cause your orator have an injunction pendente lite allowed embracing all of the relief herein and hereby prayed for, such injunction to continue in force until the determination of

the said writ of injunction, and that on the final hearing of this action it may have all the injunctions herein prayed for made perpetual, and that your orator may have such other and further relief as this cause may require, as well as costs.

May it please your Honors to grant unto your orator a writ or writs of subpoena to be issued out of and under the seal of this Honorable Court and directed to said defendants, Washington Dodge, as Assessor of said City and County of San Francisco, and said Joseph H. Scott, as Tax Collector of said City and County of San Francisco, commanding them and each of them to appear in this cause at some day certain to be named therein and to answer in the premises, but not under oath, answer under oath being expressly waived, and to abide by and perform such decree as may be rendered herein.

T. I. BERGIN,

Solicitor for Complainant.

Northern District of California, }  
 City and County of San Francisco. } ss.

George Grant, being duly sworn, says on oath: That he is the cashier and secretary of The Nevada National Bank of San Francisco, the complainant in the above-entitled cause; that he has read the foregoing second supplemental bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon information and belief, and as to those matters that he believes it to be true.



National Bank of San Francisco, a national banking association, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 20th day of June, in the year of our Lord one thousand nine hundred and one, and of our independence the 125th.

[Seal]

SOUTHARD HOFFMAN,

Clerk.

Memorandum Pursuant to Rule 12, Supreme Court U. S.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of August next, at the clerk's office of said Court, pursuant to said bill; otherwise the said bill will be taken pro confesso.

SOUTHARD HOFFMAN,

Clerk.

[Endorsed]:

United States Marshal's Office,

Northern District of California.

11  
12

I hereby certify that I received the within writ on the 20th day of June, 1901, and personally served the same on the 30th day of June, 1901, on Joseph H. Scott, as Tax Collector of the City and County of San Francisco, State of California, by delivering to and leaving with Joseph H. Scott, as Tax Collector of the City and County of San Francisco, State of California, one of said defendants

named therein, at the City and County of San Francisco, in said District, an attested copy thereof.

San Francisco, June 21, 1901.

JOHN H. SHINE,  
United States Marshal.  
By E. A. Morse,  
Office Deputy.

Filed June 21, 1901. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

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At a stated term, to wit, the November term, A. D. 1901, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the City and County of San Francisco, on Monday, the 20th day of January, in the year of our Lord one thousand nine hundred and two. Present: The Honorable WILLIAM W. MORROW, Circuit Judge.

THE NEVADA NATIONAL BANK  
OF SAN FRANCISCO, a National  
Banking Association,

Complainant,

vs.

No. 12,927.

WASHINGTON DODGE, as Assessor of  
the City and County of San Francisco,  
et al.,

Defendants.

**Order Denying Application for Injunction, etc.**

Complainant's applications, by orders to show cause is-

sued April 25th, 1900, and June 20th, 1901, herein, having been heard and submitted to the Court for consideration and decision, and the cause having also been heard upon the pleadings and agreed statements of facts filed, and having been argued and submitted to the Court for consideration and decision, and said matters having been fully considered, it is by the Court now

Ordered, that said orders to show cause above mentioned be and hereby are discharged, that complainant's applications for injunction herein be and hereby are denied; that the restraining orders contained in the above-mentioned orders to show cause be and hereby are dissolved, and that complainant's bill, supplemental bill and second supplemental bill herein be and hereby are dismissed, and that defendants have a decree for their costs herein.

*In the Circuit Court of the United States, Ninth Circuit,  
Northern District of California.*

<p>THE NEVADA NATIONAL BANK OF SAN FRANCISCO, a National Bank- ing Association,</p>	<p>Complainant,</p>	}	<p>No. 12,927.</p>
<p>vs.</p>			
<p>WASHINGTON DODGE, as Assessor of the City and County of San Francis- co,</p>	<p>Respondent.</p>		

**Enrollment.**

The complainant filed its bill of complaint herein on the 25th day of April, 1900, which is hereto annexed.

A subpoena to appear and answer in said cause was thereupon issued, returnable on the 4th day of June, 1900, which is hereto annexed.

The respondent appeared herein on the 31st day of May, 1900, by Franklin K. Lane, Esq., City Attorney of the City and County of San Francisco, his solicitor.

On the 4th day of June, 1900, an answer to the bill was filed herein, which is hereto annexed.

In the 11th day of June, 1900, a replication to said answer was filed herein and is hereto annexed.

On the 2d day of July, 1900, an order allowing filing of supplemental bill was made and entered, a copy of which order is hereto annexed, and a supplemental bill was filed herein and is hereto annexed.

A subpoena to appear and answer said supplemental bill was issued returnable August 6th, 1900, and is hereto annexed.

On the 24th day of August, 1900, an answer to supplemental bill was filed herein and is hereto annexed.

A replication to said answer was filed herein on the 31st day of August, 1900, and is hereto annexed.

On the 20th day of June, 1901, a second supplemental bill was filed herein and is hereto annexed.

A subpoena to appear and answer said second supplemental bill was issued herein; returnable August 5th, 1901, and is hereto annexed.

The appearance of J. H. Scott, as Tax Collector, etc., defendant herein, was entered on the 5th day of August, 1901 by Franklin K. Lane, Esq., City Attorney of the City and County of San Francisco, his solicitor.

On the 20th day of January, 1902, an order was made and entered herein, dissolving restraining orders, discharging orders to show cause, and dismissing bill and supplemental bills, a copy of which order is hereto annexed.

Thereafter a final decree was signed, filed and entered herein, in the words and figures following, to wit:



At a stated term, to wit, the November term, A. D. 1901, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the City and County of San Francisco, on Monday, the 20th day of January, in the year of our Lord one thousand nine hundred and two. Present: The Honorable WILLIAM W. MORROW, Circuit Judge.

<p>THE NEVADA NATIONAL BANK OF SAN FRANCISCO, a National Bank- ing Association,</p>	}	-
Complainant,		
vs.		
<p>WASHINGTON DODGE, as Assessor of the City and County of San Francis- co., et al.,</p>	}	No. 12,927.
Defendants.		;

**Final Decree.**

This cause came on to be heard at this term, and was argued by counsel, and submitted to the Court for consideration and decision;

Whereupon, on consideration thereof, it is ordered, adjudged, and decreed that complainant's bill of complaint, supplemental bill of complaint, and second supplemental

bill of complaint herein be, and the same hereby are, dismissed, and that defendants recover from complainant their costs herein expended taxed at \$30.40.

WM. W. MORROW,  
Circuit Judge.

[Endorsed]: Filed and entered January 20, 1902.  
Southard Hoffman, Clerk.

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UNITED STATES OF AMERICA.

*Circuit Court of the United States, Ninth Circuit,  
Northern District of California.*

NEVADA NATIONAL BANK, )  
Complainant, )  
vs. )  
WASHINGTON DODGE, Assessor, etc., )  
Respondent. )

**Memorandum of Costs and Disbursements.**

Disbursements:

Clerk's Fees.....	\$10.40
Docket Fee.....	20.00
	<hr/>
Total	\$30.40

January 25, 1902. No appearance.

Costs taxed at \$30.40.

SOUTHARD HOFFMAN,  
Clerk.

United States of America,  
Northern District of California,  
City and County of San Francisco. } ss.

W. I. Brobeck, being duly sworn deposes and says: That he is one of the attorneys for the respondent in the above-entitled cause, and as such is better informed, relative to the above costs and disbursements, than the respondent. That the items in the above memorandum are correct, to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause.

W. I. BROBECK.

Subscribed and sworn to, before me, this 22d day of January, A. D. 1902.

[Seal]

J. J. GREIF,  
Deputy County Clerk.

To T. I. Bergin, Esq., Attorney for Complainant.

You will please take notice that on Saturday, the 25th day of January, A. D. 1902, at the hour of 11 o'clock A. M., I will apply to the clerk of said Court to have the within memorandum of costs and disbursements taxed pursuant to the rule of said Court, in such case made and provided.

FRANKLIN K. LANE,  
Attorney for Respondent.

[Endorsed]: Filed this 22d day of January, A. D. 1902.  
Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

**Certificate to Enrollment.**

Whereupon, said pleadings, subpoenas, copies of orders, and final decree, and a memorandum of taxed costs, are hereto annexed, said final decree being duly signed, filed, and enrolled, pursuant to the practice of said Circuit Court.

Attest, etc.

[Seal]

SOUTHARD HOFFMAN,

Clerk.

By W. B. Beazley,

Deputy Clerk.

[Endorsed]: Enrolled Papers. Filed January 20, 1902.  
Southard Hoffman, Clerk. By W. B. Beazley, Deputy  
Clerk.

*In the Circuit Court of the United States, Ninth Circuit,  
Northern District of California.*

IN EQUITY.

THE NEVADA NATIONAL BANK OF  
SAN FRANCISCO, a National Bank-  
ing Association,

Complainant,

vs.

WASHINGTON DODGE, as Assessor  
of the City and County of San Fran-  
cisco, State of California,

Defendant.

No. 12,927.

Monday, June 25, 1900.

**Opinion on Application for an Injunction Pendente Lite.**

T. I. BERGIN, Attorney for Complainant.

FRANKLIN K. LANE, City Attorney, for Defend-  
ant.

MORROW, Circuit Judge.—This is an application on the part of the complainant for an injunction pendente lite, restraining and enjoining the defendant, as Assessor of the City and County of San Francisco, from making an assessment upon the shares of the capital stock of the complainant for the fiscal year ending June 30, 1901.

This Court is of the opinion that a temporary injunction should not issue to restrain the Assessor from making the assessment described in the bill in this case. That officer should be permitted to determine the elements and to make an official record of the amount of the taxes which he deems the complainant liable to under the statute. The issues raised by the allegations of the bill and the admissions and denials of the answer as to the elements and the amount of the taxes, ought to be fully determined while the Assessor has the authority to act. Moreover, when this amount is fixed, the controversy is clearly defined, once for all, and if the tax is finally sustained, the principal sum upon which interest and costs and other liabilities may accrue will have been determined, so that the city and county may not suffer any loss by reason of this action to determine the legality of the taxes.

A preliminary injunction will therefore be denied and the pending restraining order be dissolved, without prejudice, however, to the right of the complainant upon a supplemental bill or other pleading to apply for an injunction if so advised, to restrain the Assessor from collecting the tax after an assessment has been made, if one is made; and this order is made upon the condition that the complainant shall have the opportunity of making such an application to the Court before the collection of the tax is enforced or attempted to be enforced by the defendant.

[Endorsed]: Filed June 25, 1900. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

EXHIBIT "A"

TABULAR STATEMENT..

Showing the Financial Condition of the Commercial Banks of California at close of business, on the 31st day of March, 1900, as Reported to the Bank Commissioners.

RESOURCES

LIABILITIES

	NAMES OF THE BANKS	RESOURCES			LIABILITIES													
		BANK PREMISES	OTHER REAL ESTATE	INVESTED IN STOCKS, BONDS AND WARRANTS	STOCKS, BONDS AND WARRANTS	LOANS ON OTHER SECURITIES	LOANS ON PERSONAL SECURITY	MONEY ON HAND	DUE FROM BANKS AND BANKERS	OTHER ASSETS	TOTALS OF ASSETS AND LIABILITIES	CAPITAL PAID UP	RESERVE AND PROFIT AND LOSS	DUE DEPOSITORS	DUE TO BANKS AND BANKERS	STATE, COUNTY OR CITY MONEY	OTHER LIABILITIES	
160	Interior Commercial Banks .....	1,725,029.57	5,810,358.78	4,527,402.61	5.71	2,882,046.48	2,598,928.87	21,508,595.16	4,593,437.04	10,569,179.77	1,009,862.67	69,626,816.66	18,381,864.59	7,955,633.49	41,472,158.15	1,789,959.49	212,373.78	714,827.16
18	San Francisco Commercial Banks.....	1,699,584.76	2,621,495.38	5,434,978.61	1.18	11,859,717.19	2,378,597.82	18,501,592.37	10,088,439.09	13,746,014.75	1,360,722.61	72,626,753.76	7,958,925.53	11,786,466.97	42,725,832.65	6,827,492.82		3,328,035.79
178	Totals State Commercial Banks of California...	3,424,614.33	8,431,854.16	9,962,381.22	6.89	14,741,763.67	4,977,526.69	40,010,187.53	14,681,876.13	24,315,194.52	2,370,585.28	142,253,570.42	26,340,790.12	18,842,100.46	84,197,990.80	8,617,452.31	212,373.78	4,042,862.95

ATTEST:

C. H. DUNSMOOR,  
Secretary of the Board of Bank Commissioners,  
SAN FRANCISCO, CAL.

STATE OF CALIFORNIA, }  
CITY AND COUNTY OF SAN FRANCISCO. } ss.

I, C. H. DUNSMOOR, Secretary of the Board of Bank Commissioners of the State of California, do hereby certify that I have carefully compared the foregoing copy of a Tabular Statement showing totals of Resources and Liabilities of Commercial Banks in California and of the endorsements thereupon, with the original document remaining on file in this office, and that the same is a true and correct copy therefrom, and of the whole of said document, so far as same refers to totals.

IN WITNESS WHEREOF, I have hereunto set my hand (having no official seal) at the office of the Board of Bank Commissioners, in the City and County of San Francisco, Cal., this 9th day of June, 1900.

C. H. DUNSMOOR,  
Secretary of Board of Bank Commissioners.

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*In the Circuit Court of the United States, Ninth Circuit,  
Northern District of California.*

THE NEVADA NATIONAL BANK OF  
SAN FRANCISCO, a National Bank-  
ing Association,

Complainant,

vs.

WASHINGTON DODGE, as Assessor  
of the City and County of San Fran-  
cisco, State of California,

Defendant.

No. 12,927.

**Affidavit of Charles H. Dunsmoor.**

Charles H. Dunsmoor, being duly sworn, says on oath:  
I am and have been for the year last past and upwards the  
duly acting and qualified secretary of the Board of Bank  
Commissioners organized and acting under that certain  
act of the legislature of the State of California entitled  
"An act creating a Board of Bank Commissioners and  
prescribing their duties and powers, approved March 30,  
1878, and the several acts of the legislature of the said  
State of California amendatory thereof and supplemen-  
tary thereto," and as such secretary I am and have been  
the legal custodian of the books, papers, and records of

said Board of Bank Commissioners; that the document hereto annexed, marked Exhibit "A," which is hereby referred to and made part hereof, is a correct copy of the total amounts of the resources and liabilities of the commercial banks organized, acting and doing business in the State of California, who have made reports to said Board of Bank Commissioners pursuant to the requirements of said act of the legislature, and the same constitutes part of the records of the office of said Board of Bank Commissioners and it has been made by this affiant in the course of his duties as secretary of said Board of Bank Commissioners in obedience to the directions of said Board of Bank Commissioners and the requirements of said act of the legislature; that said document fully and truly exhibits the resources and liabilities of said banks as reported to said Board of Bank Commissioners during the period of time the same purports to cover; that said Board of Bank Commissioners has no official seal, but said Exhibit "A" is certified to by affiant in the manner in which he certifies the official documents of said board.

C. H. DUNSMOOR.

Subscribed and sworn to before me this June 9, A. D. 1900.

[Notarial Seal] HOLLAND SMITH,  
Notary Public in and for the City and County of San  
Francisco, State of California.

*In the Circuit Court of the United States, Ninth Circuit,  
Northern District of California.*

THE NEVADA NATIONAL BANK OF  
SAN FRANCISCO, a National Bank-  
ing Association,

Complainant,

vs.

WASHINGTON DODGE, as Assessor  
of the City and County of San Fran-  
cisco, State of California, and JOS-  
EPH H. SCOTT, as Tax Collector of  
said City and County,

Defendants.

No. 12,927.

**Agreed Statement of Facts.**

It is hereby stipulated and agreed by and between the respective parties to the above-entitled action that upon the hearing or any further proceeding that may be had in the above-entitled cause, the following facts shall be deemed and taken to be true for the purposes thereof, that is to say:

**I.**

Paragraphs 1, 2, 3, 4, 5, 6, 7, 8 of the original bill of complaint in the above-entitled cause are true, and so much of paragraph 9 of said bill of complaint as relates to the Stock and Bond Exchange and the mode and man-

ner of doing business therein in selling stocks, bonds and other securities and making report of the same and ascertainment therefrom of the current value of such stocks, bonds, and other securities as in said bill of complaint alleged is true. That the stock of complainant was on the first Monday in March, A. D. 1900, and for a year and upwards prior thereto, listed upon said Stock and Bond Exchange. That on or about February 28, A. D. 1900, an official sale of the stock of complainant was reported in said official publication known as the Stock and Bond Exchange at \$185 per share, since which time no sale of any of the stock of complainant has been reported in said Stock and Bond Exchange.

## II.

That on said first Monday of March, A. D. 1900, at 12 o'clock noon of that day, said complainant did not own, and has not at any time owned, any real estate.

## III.

That on the first Monday of March, A. D. 1900, at 12 o'clock noon of that day, to wit, on March 5th, noon, A. D. 1900, complainant held and owned \$2,070,000 of bonds of the United States issued in accordance with the provisions of an act of Congress entitled "An act to authorize the funding of the national debt, approved July 14, 1870, amended by an act approved January 20, 1871," and other similar acts of Congress of the United States in this behalf made and provided. That on said first Monday of March, A. D. 1900, at 12 o'clock noon, the premium on

said \$2,070,000 bonds was the sum of \$265,284.05, making said \$2,070,000 of United States bonds, with the premium thereon, equal to the sum of \$2,335,284.05.

IV.

That on said first Monday of March, A. D. 1900, at 12 o'clock noon of that day, said complainant owned the sum of \$2,276,917 in cash that it then, theretofore, and thence hitherto has used in the current course of its business as a national bank. That the aforesaid United States bonds, said cash on hand and the other personal property constituting the furniture, notes, etc., fixtures and appurtenances of the banking house and business of The Nevada National Bank of San Francisco aforesaid, constituted the assets of The Nevada National Bank of San Francisco in conducting its business of a national bank, and the percentage of the United States bonds that The Nevada National Bank of San Francisco aforesaid is required by law to hold, constituted part and parcel of said United States bonds hereinbefore mentioned and described, a correct statement of the entire assets and liabilities of said bank on said first Monday of March, A. D. 1900, at 12 o'clock noon of said day, being in the words and figures following:

Assets:

Call loans .....	\$4,678,632.76	
Bills discounted.....	120,131.78	
Bills receivable .....	133,700.00	4,932,464.54
<hr/>		
Treasurer United States 5 per		
cent redemption fund .....		29,705.00

following, that is to say, he did make deductions as follows:

1st. For United States bonds .....	\$2,142,400
2d. For Miscellaneous bonds and quasi public corporations hereinbefore mentioned .. .. .	963,099
	\$3,105,499

which sum he divided by 30,000 shares of the capital stock of complainant, leaving \$103.50 as the amount of deductions upon each share of the capital stock of said complainant, and in making said assessment did estimate said capital stock at the sum of \$185 per share, from which said last-named sum he did deduct said sum of \$103.50 and no more, and no other deductions or exemptions were made in making said assessment, leaving the difference of \$81.50, which, for the purposes of said assessment, he treated as the assessable value of each of the shares of the capital stock of said complainant. In ascertaining and determining the market value of each of the shares of the capital stock of said complainant, and making said assessment, said Assessor considered the market value thereof quoted on said Stock and Bond Exchange on said first Monday in March, A. D. 1900, at 12 o'clock noon of said day, and also took into consideration the dividends said stock was earning and paying to the owners and holders thereof, the sworn statement made by the officers of complainant to the Controller of the Currency of the United States, and the general reputation of the officers

and manager of said complainant, and the complainant as bank and bankers. In making said assessment said Washington Dodge, as Assessor as aforesaid, did exclude from the amount of deductions or exemptions said sum of \$192,884.05, being part of the amount of the premium upon said United States bonds.

## VI.

That on said first Monday of March, A. D. 1900, at 12 o'clock noon of that day there were 116 of the shareholders in complainant owning the aggregate among them 15,933 shares of the capital stock of complainant, and who, to wit, said 116 shareholders did not, nor did any of them, on said first Monday of March at 12 o'clock noon of that day, or at all, own real estate, and no one of said shareholders owned any real estate, and the tax upon their said stock was not secured by real estate owned by them or any of them on said first Monday of March at 12 o'clock noon of that day or at any time. That the total amount of said tax upon said 15,933 shares of stock amounted to the sum of \$20,879.04.

That the ownership of the shares of stock of complainant may and does change by endorsement and transfer of the certificate or certificates evidencing and representing any given number of shares without there being any change in the name or names in which the said certificate or certificates stand upon the books of complainant, and ownership thereof may and does change intermediate 12 o'clock noon on the first Monday in March annually and the time of making of the assessment by the Assessor of

said City and County of San Francisco as required by law. That said bill of complaint correctly states the number of shareholders in complainant as therein alleged, and the entire capital stock of complainant was on said first Monday in March, A. D. 1900, at 12 o'clock noon of that day, held and owned by said 203 shareholders in complainant.

### VII.

That on or about March 23, A. D. 1900, and before the assessment of said shares of stock of complainant, said Washington Dodge did cause to be addressed and mailed to the shareholders of complainant, and to each of them who owned, claimed, possessed or controlled any shares of the capital stock of complainant at 12 o'clock noon on said first Monday of March, A. D. 1900, a printed notice reading in the words and figures following, to wit:

[Seal of the City and County of San Francisco.]

Office of the City and County Assessor, City Hall.

San Francisco, March 23, 1900.

Isaias W. Hellman, Nevada Bank.

Dear Sir: As you are the owner of National Bank stock, you will be assessed as authorized by law as follows:

Shares of the First National Bank, S. F.

Shares of the S. F. National Bank, S. F.

5215 Shares of the Nevada National Bank, S. F., \$5,892.95

Shares of Crocker, Woolworth National Bank, S. F.

The assessment will be attached to any real estate you



may own in the city and county. If you are not the owner of any realty, such steps, for the immediate collection of the tax, as are authorized by law will be taken.

If you have any exemptions or reductions allowed by law, please call at the Assessor's office, City Hall, San Francisco, and present them within ten days from the date hereof.

Respectfully,  
WASHINGTON DODGE,  
Assessor.

That in response to said notice said shareholders of complainant did not, nor did any of them, make any return or statement or avail themselves of the invitation or request therein contained, or furnish any statement of any debts unsecured by trust deed, mortgage or other lien on real or personal property due or owing by them, or any of them, to bona fide residents of the State of California. That the complainant did not, nor did any officer or agent thereof, make return or statement of any debts due or owing by such complainant unsecured by trust deed, mortgage or other lien on real or personal property to bona fide residents of the State of California, nor did complainant or any officer or agent of complainant ask or request any such deduction or any deduction.

#### VIII.

That the tabular statement hereto annexed, marked Exhibit "A," which is hereby referred to and made a part hereof, truly and correctly shows the financial condition

of the commercial banks of California on the 5th day of March, A. D. 1900, at 12 o'clock noon of that day and at the close of business on said 5th day of March, A. D. 1900, as reported to the Bank Commissioners of the State of California organized and acting under that certain act of the legislature of the State of California, entitled "An act creating a Board of Bank Commissioners and prescribing their duties and powers, approved March 30, 1878, and the several acts of the legislature of said State of California amendatory thereof and supplementary thereto." That said commercial banks were and are corporations organized and acting under the laws of the State of California, and were and are citizens of the State of California, and are assessed and pay taxes in the manner and form prescribed by the laws of the State of California, and that the solvent credits owned and held by said banks on said first Monday in March, A. D. 1900, at 12 o'clock noon of that day were and are moneyed capital in the hands of individual citizens of the State of California, to wit, said corporations which enter into competition in business with complainant; that said banks and said property were assessed and taxed for the fiscal year ending June 30, 1901, and the franchise of said commercial banks and trust companies were also assessed to such corporations, the valuation of such franchise being ascertained and fixed by deducting from the aggregate market value of the stock of such companies the value of the other property of such companies, the remainder being the valuation at which such franchises were assessed and taxed. That on the

first Monday of March, 12 o'clock, noon, 1900, there were shares of stock in banking corporations amounting to the sum of \$30,000,000 in said State.

### IX.

That on June 30, A. D. 1900, said Washington Dodge, as Assessor as aforesaid, did make and complete his assessment-book in manner aforesaid, and therein did assess the stock of complainant in manner aforesaid and set down therein the tax thereon, to wit, on said 13,933 shares of the capital stock of complainant the sum of \$20,879.04, payment of which sum of money he, said Assessor, did on June 30, A. D. 1900, demand of complainant in said City and County of San Francisco, and did then and there inform complainant that if payment of the same were not made to him, he would proceed to collect and enforce collection and payment of the same, as alleged in the supplemental bill of complaint in the above-entitled cause, and the assessment of the capital stock of complainant in said supplemental bill of complaint alleged and in the answer to said supplemental bill alleged was made in the mode and manner hereinbefore described and the same constitutes the assesment of the capital stock of complainant for the fiscal year ending June 30, 1901.

That said Washington Dodge, as Assessor as aforesaid, after completing said assessment, to wit, on July 2, A. D. 1900, did deliver the same to John A. Russell, clerk of the Board of Supervisors of said City and County of San Francisco, as clerk of the Board of Equalization of said City and County of San Francisco, and thereafter, to wit,

on July 18, 1900, after the Board of Equalization of said City and County of San Francisco had equalized said assessment, said John A. Russell, as clerk thereof, did deliver said assesment-book to the Auditor of said City and County of San Francisco, and after said Auditor had performed his duties in and about said assesment-book, he, the said Auditor of said City and County of San Francisco, afterwards, to wit, on October 8, A. D. 1900, did deliver the duplicate assessment-book, comprising and containing said assessment so made in manner aforesaid, to Joseph H. Scott, who was then, theretofore, and has thence hitherto continued to be and still is the duly elected, acting and qualified tax collector of said City and County of San Francisco. That in said duplicate assessment-book as delivered to said Joseph H. Scott, as tax collector as aforesaid, are listed and set down and assessed the stockholders of complainant for the number of shares of stock by them respectively held and owned in complainant on the first Monday of March, A. D. 1900, at 12 o'clock noon of that day, together with the amount of tax set opposite the name and number of shares of stock by each of them respectively held, the amount of such taxes so set forth in said duplicate assessment-book against said 116 shareholders of complainant constituting said sum of \$20,879.04 as hereinbefore stated, which said duplicate assessment-book and the assessment of the stock of complainant and the tax therein contained and charged and founded upon the assessment made by said Washington Dodge, as Assessor of said City and County of San Francisco, in manner and form as hereinbefore described.

That thereafter, to wit, on June 10, A. D. 1901, as such tax collector, said Joseph H. Scott, did publish the delinquent tax list in the manner and form prescribed by law, wherein he did give notice in the words and figures, following to wit:

“State of California,  
City and County of San Francisco. } ss.

Public notice is hereby given that default having been made in the payment of taxes due to the State of California and to the City and County of San Francisco, for the year ending the 30th day of June, 1901, upon the personal property, real estate and State poll tax hereinafter described, Joseph H. Scott, Tax Collector of the City and County of San Francisco, State of California, by virtue of the power and authority in him vested by law, did, upon Monday, the 26th day of November, 1900, levy upon said personal property, and did upon Monday, the 29th day of April, 1901, levy upon the said real property, and that the Tax Collector will upon Monday, the 24th day of June, 1901, at the hour of 11 o'clock A. M., sell the same to the State in the Tax Collector's office in said city and county, unless the taxes delinquent, together with the costs and penalties, are paid.

JOSEPH H. SCOTT,  
Tax Collector of the City and County of San Francisco.”

In which delinquent tax list so published as aforesaid are set forth and contained the names of said 116 shareholders of complainant with the amount of shares by

them respectively owned as in the original and second supplemental bill of complaint in the above-entitled cause named and set forth, and but for the order of this Court said Joseph H. Scott, as Tax Collector as aforesaid, would have made sale of the stock of said stockholders as by him stated in said notice of sale appended to his delinquent tax list as aforesaid.

Dated Dec. 6th, 1901.

T. I. BERGIN,

Solicitor for Complainant.

FRANKLIN K. LANE,

City Attorney, Solicitor for Respondent.

[Endorsed]: Filed December 7, 1901. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit,  
Northern District of California.*

THE NEVADA NATIONAL BANK OF  
SAN FRANCISCO,  
Complainant,

vs.

WASHINGTON DODGE, as Assessor  
of the City and County of San Fran-  
cisco, State of California, and  
JOSEPH H. SCOTT, as Tax Collector  
of said City and County,  
Defendants.

No. 12,927.

**Petition for Appeal.**

To the Honorable, the Circuit Court Above Named :

Your petitioner, the complainant in the above-entitled cause, represents that there is manifest error committed

the injury of petitioner in the final decree pronounced in this case against it in favor of the defendants therein, rendered and entered herein January 20th, 1902, and your petitioner is entitled to an appeal herein.

Wherefore, your petitioner, considering itself aggrieved by the decision of this Honorable Court, prays for an appeal from said final decree to the United States Circuit Court of Appeals for the Ninth Circuit

Your petitioner herewith files its bond in the penal sum of \$500.00 which bond is approved by the Honorable W. W. Morrow, one of the Judges of this Court, and appellant also files its assignment of errors with its petition.

T. I. BERGIN,

Solicitor for Complainant and Appellant.

[Endorsed]: Filed January 22, 1902. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit,  
Northern District of California.*

THE NEVADA NATIONAL BANK OF  
SAN FRANCISCO,

Complainant,

vs.

WASHINGTON DODGE, as Assessor  
of the City and County of San Fran-  
cisco, State of California, and  
JOSEPH H. SCOTT, as Tax Collector  
of said City and County,

Defendants.

No. 12,927.

### Assignment of Errors.

Now comes The Nevada National Bank of San Francisco, the complainant in the above-entitled cause, and makes the following assignment of errors in the decree of the Circuit Court herein, namely:

First.—The Court erred in granting the decree entered in the above-entitled cause on the 20th day of January, 1902.

Second.—The Court erred in adjudging and decreeing that that certain act of the legislature of the State of California in the bill of complaint in said cause mentioned enacted March 14, 1899, entitled “An act to amend section three thousand six hundred and eight of the Political Code



of the State of California relating to the general revenue of the State and to property liable to taxation for the purpose of revenue, and to add new sections to be known as sections three thousand six hundred and nine and three thousand six hundred and ten also relating to the general revenue of the State and to property liable to taxation for the purpose of revenue," was and is constitutional and valid.

Third.—The Court erred in adjudging and decreeing that said last-mentioned act of the legislature is not contrary to the provisions of the fourteenth amendment of the Constitution of the United States, and not contrary to the provisions of section one of article XIII of the Constitution of the State of California.

Fourth.—The Court erred in adjudging and decreeing that said act of the legislature is not in violation of and repugnant to the provisions of section five thousand two hundred and nineteen of the Revised Statutes of the United States, in that the assessment and tax therein and thereby authorized and provided for is at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens in the State of California.

Fifth.—The Court erred in adjudging and decreeing that said act of the legislature did not and does not deprive complainant and the shareholders of complainant of their property without due process of law.

Sixth.—The Court erred in adjudging and declaring that said act of the legislature of the State of California was not and is not upon its face void for contradiction and inconsistency.

Seventh.—The Court erred in adjudging and decreeing that said act of the legislature of the State of California was not void as providing for and authorizing a mode of the assessment and taxation of shares of the capital stock of national banking associations different from that authorized and provided for the assessment and taxation of the shares of stock in corporations organized and acting under the laws of the State of California, and in adjudging and declaring that under the provisions of said act, the shares of the shareholders of complainant were not assessed at a greater rate than that authorized and provided for the assessment and taxation of shares of stock in corporations organized and acting under the laws of the State of California.

Eighth.—The Court erred in adjudging and decreeing that under the laws of the State of California and the fourteenth amendment to the Constitution of the United States, as well as the provisions of the Constitution of the State of California, the legislature of said State in and by the provisions of said act could lawfully authorize a mode of taxation of the shares of the capital stock of complainant other and different from and more burdensome than that authorized and provided for the assessment and taxation of other shares of capital stock in corporations organized and acting under the laws of the State of California.

Ninth.—The Court erred in adjudging and decreeing that in making the assessment in the pleadings herein complained of the Assessor of said City and County of San

Francisco did comply with the requirements of the provisions of section three thousand six hundred and nine of said act of the legislature.

Tenth.—The Court erred in adjudging and decreeing that said Assessor did not violate the provisions of said section three thousand six hundred and nine of said act of the legislature.

Eleventh.—The Court erred in adjudging and decreeing that said Assessor in making said assessment in the pleadings herein complained of did deduct from the value of the shares of the shareholders of complainant such sum as was or is in the same proportion to such value as the total value of the real estate and property exempt by law from taxation bears to the whole value of all the shares of the capital stock of complainant.

Twelfth.—The Court erred in adjudging and declaring that said Assessor in making said assessment was legally entitled to assess the corporate property of complainant other than real estate, and that although such property and all thereof has been adjudged and declared not subject to State taxation and should be deducted from any assessment made under the Constitution and laws of the State of California, that said assessment so made by said Assessor was not illegal and invalid, although it did include the same.

Thirteenth.—The Court erred in adjudging and declaring that in assessing the shares of the shareholders of complainant said Assessor was legally entitled in making such assessment to apply a rule of valuation different

from that applied in the assessment of all other property in the State of California, and particularly in the assessment of the property of corporations organized and acting under the laws of the State of California and more onerous and burdensome than that applied in assessing other moneyed capital in the hands of individual citizens of said State.

Fourteenth.—The Court erred in adjudging and declaring the assessment made by said Assessor as in the pleadings herein stated was not invalid, illegal and void, although in making the same said Assessor in assessing the shares of the shareholders of complainant applied the rule not of the valuation of the property of such shareholders, but superadded thereto goodwill of the business of complainant and including in estimating the value of such shares the property under the Constitution and laws of the United States and of the State of California exempt from taxation and in respect to which said shareholders were not and are not liable to assessment and taxation.

Fifteenth.—The Court erred in adjudging and declaring that in making said assessment as in the pleadings alleged and admitted said Assessor did not act in contravention of the provisions of the fourteenth amendment of the Constitution of the United States and of the provisions of section five thousand two hundred and nineteen of the Revised Statutes of the United States, although in

making said assessment in allowing deductions said Assessor only allowed the par value of the United States bonds held and owned by complainant and not the premium added thereto, while in ascertaining the value of the shares of the capital stock of complainant said Assessor did include the amount of the premium upon said United States bonds and securities.

Sixteenth.—The Court erred in not granting the relief prayed by complainant in its original and several supplemental bills in the above-entitled cause.

Dated San Francisco, January 22, A. D. 1902.

T. I. BERGIN,

Solicitor for Complainant.

[Endorsed]: Filed January 22, 1902. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

At a stated term, to wit, November Term A. D. 1901, of the Circuit Court of the United States of America, Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the City and County of San Francisco on Wednesday, the 22d day of January, in the year of our Lord, one thousand nine hundred and two, the Honorable W. W. MORROW, Circuit Judge.

THE NEVADA NATIONAL BANK OF  
SAN FRANCISCO, a National Bank-  
ing Association,

Complainant,

vs.

WASHINGTON DODGE, as Assessor  
of the City and County of San Fran-  
cisco, State of California, and  
JOSEPH H. SCOTT, as Tax Collector  
of said City and County,

Defendants.

No. 12,927.

### Order Allowing Appeal.

Upon motion of T. I. Bergin, solicitor for complainant, and upon filing of a petition for an order allowing an appeal, an assignment of errors and an undertaking on appeal, approved in the sum of \$500.00.—

It is ordered that complainant be, and it is hereby, allowed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree filed

and entered in the above-entitled cause on January 20th, A. D. 1902, and that a certified transcript of the record and proceedings herein be transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

WM. W. MORROW,  
Judge.

[Endorsed]: Filed January 22, 1902. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

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*In the Circuit Court of the United States, Ninth Circuit,  
Northern District of California.*

THE NEVADA NATIONAL BANK OF  
SAN FRANCISCO, a National Bank-  
ing Association,

Complainant,

vs.

WASHINGTON DODGE, as Assessor  
of the City and County of San Fran-  
cisco, State of California, and  
JOSEPH H. SCOTT, as Tax Collector  
of said City and County,

Defendants.

No. 12,927.

### Undertaking on Appeal.

Whereas, The Nevada National Bank of San Francisco, complainant in the above-entitled cause, is about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree of the Circuit Court of the

United States in and for the Northern District of California entered in said suit on January 20th, A. D. 1902, in favor of the defendants therein, and against The Nevada National Bank of San Francisco aforesaid denying to said complainant the relief prayed in and by its original bill of complaint and its several supplemental bills of complaint in said suit filed:

Now, therefore, in consideration of the premises and of such appeal, the undersigned J. Henry Meyer and J. Freuler do hereby undertake and promise on the part of The Nevada National Bank of San Francisco aforesaid, appellant, that the said appellant shall prosecute its said appeal to effect, and if it fail to make its plea good, shall answer and pay to said Washington Dodge and Joseph H. Scott all costs that may be awarded against it on the appeal or on a dismissal thereof not exceeding the sum of \$500.00 five hundred dollars, to which amount they acknowledge themselves bound.

J. HENRY MEYER,  
J. FREULER.

State of California,  
City and County of San Francisco. } ss.

J. Henry Meyer and J. Freuler being sworn, each for himself, says: That he is a freeholder in the Northern District of California and is worth the sum of \$500.00 over and above all his just debts and liabilities, exclusive of property exempt from execution.

J. HENRY MEYER,  
J. FREULER.



Subscribed and sworn to before me this 22d day of January, A. D. 1902.

[Seal] JAMES M. ELLIS,  
Notary Public in and for the City and County of San Francisco, State of California.

The foregoing undertaking is approved.

WM. W. MORROW,  
Judge.

[Endorsed]: Filed January 22, 1902. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

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*In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.*

THE NEVADA NATIONAL BANK OF  
SAN FRANCISCO, a National Bank-  
ing Association,

Complainant,

vs.

WASHINGTON DODGE, as Assessor  
of the City and County of San Fran-  
cisco, State of California, and  
JOSEPH H. SCOTT, as Tax Collector  
of said City and County,

Defendants.

No. 12,927.

**Certificate to Record on Appeal.**

I, Southard Hoffman, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Cir-

cuit, in and for the Northern District of California, do hereby certify the foregoing pages, numbered from 1 to 164, inclusive, to be a full, true, and correct copy of the record and proceedings in the above-entitled cause, and that the same together constitute the transcript of the record herein, upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the original citation issued in said cause is annexed hereto, and that the cost of the foregoing transcript of record is \$102.25, which said sum was paid by The Nevada National Bank of San Francisco, Complainant.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this 31st day of January, A. D. 1902.

[Seal]

SOUTHARD HOFFMAN,  
Clerk of United States Circuit Court, Ninth Judicial  
Circuit, Northern District of California.

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**Citation.**

UNITED STATES OF AMERICA—ss.

The President of the United States to Washington Dodge, as Assessor of the City and County of San Francisco, State of California, and Joseph H. Scott as Tax Collector of said City and County, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the City of San Francisco,

in the State of California, on Monday, February 3d, A. D. 1902, pursuant to an order allowing appeal made and entered in the clerk's office of the Circuit Court of the United States for the Ninth Circuit, Northern District of California, in a certain action numbered upon the register of actions of said Circuit Court No. 12,927, wherein The Nevada National Bank of San Francisco, a national banking association, is appellant, and Washington Dodge, as Assessor of the City and County of San Francisco, State of California, and Joseph H. Scott, as Tax Collector of said city and county, are appellees, to show cause, if any there be, why the decree rendered against said appellant as in the said order allowing appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable WILLIAM W. MORROW, Judge of the United States Circuit Court, Ninth Circuit, Northern District of California, this January 22d, A. D. 1902.

WM. W. MORROW,  
Judge.

Service of the within citation and receipt of a copy thereof is hereby admitted this January 22, A. D. 1902.

FRANKLIN K. LANE.

[Endorsed]: Circuit Court of the United States, Ninth Circuit, Northern District of California. No. 12,927. The Nevada National Bank of San Francisco, Complainant, vs. Washington Dodge, as Assessor etc., et al., Defendants. Citation. Filed January 22, 1902. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

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[Endorsed]: No. 794. In the United States Circuit Court of Appeals for the Ninth Circuit. The Nevada National Bank of San Francisco, a National Banking Association, Appellant, vs. Washington Dodge, as Assessor of the City and County of San Francisco, State of California, and Joseph H. Scott, as Tax Collector of said City and County, Appellee. Transcript of Record. Upon Appeal from the United States Circuit Court for the Northern District of California.

Filed January 31, 1902.

F. D. MONCKTON,  
Clerk.